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ROBERT T. BARTON, JR.

OF THE WINCHESTER (VIRGINIA) BAR

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FORMS

I. Process, and Returns.

1a. Precipe or Order for Process to Commence a Suit.

A. B. v. E. F., G. H. and I. J.	In Chancery.

To the Clerk of the ..... Court of the ..... of ......, ...:

Please issue process commanding the proper officer to summon E. F., G. H. and I. J. to appear before the ...... Court of ......, at the courthouse thereof, on the first day of the next ...... term of the said court (*or,* in the clerk's office of the Court of ...... at the rules to be holden for the said Court on Monday, the ...... day of ......, 19..) to answer the bill of complaint of A. B.

A. B.
(*or,* Q. M. attorney *or* agent for A. B.)

Text page 130; Va. Code, § 6061; Barnes' W. Va. Code, Ch. 124, § 5.

1b. Another Form of an Ordinary Precipe.

A. B. v. C. D.	In Chancery.

Issue summons in the above cause returnable to ...... Rules, 19.., or, returnable to 1st (*or* 2d, as the case may be) ...... Rules 19..

Q. M.,
Counsel

Idem.

1c. Precipe Where There Are Several Defendants, Some of Whom Are Nonresidents and Infants.

...... County (*or* City of ......) to-wit:

In the ...... Court.

John Doe
v.
Richard Roe and Fannie Roe, his wife. } In Chancery.

James Roe and John Hunter, in his own right, adults and residents of this state; Minnie Roe, and James A. Roe, infant children of Jacob Roe, deceased, and John Hunter, as administrator of the estate of Jacob Roe, deceased, Jacob Boyd, as executor of the last will and testament of Henry Brown, deceased, residents of this state; Wm. N. Powell and Amelie Powell, adults and non-residents of this state; Henry Black and Fannie Jordan, infants and non-residents of this state; the unknown children of Margaret Wilson who was Margaret Roe, and now deceased; and Luther Pannett, Sheriff of Frederick Co., Va., and as committee administrator of the estate of Neil Wilson, deceased.

The clerk will appoint A. B. (*in Va. add,* a discreet and competent attorney at law) guardian ad litem for the infant defendants; issue process as to all the adult resident defendants, returnable to ...... Rules, 19..; enter an order of publication against the non-resident adult defendants as per accompanying affidavit; and mail a copy thereof to each non-resident defendant whose address is given therein.

Q. M.,
Counsel.

............., 19..

Idem.

2. Process to Commence a Suit.

Commonwealth of Virginia (*or* State of West Virginia)
County (*or* City) of ......, to-wit:

To the Sheriff (*or* Sergeant) of said County (*or* City) Greeting:

We command you in the name of the Commonwealth of Virginia (*or* State of West Virginia) that you summon E. F., G.

H., and I. J., if they be found within your bailiwick, to appear before the ...... Court of ...... at the courthouse thereof, on the first day of the next ...... term thereof (*or,* in the clerk's office of the ...... Court of ...... at the rules to be holden for the said court on Monday, the .... day of ......, 19..) to answer the bill of complaint of A. B., and this you shall in no wise omit, and have then and there this writ, and make return how you have executed the same.

Witness Y. Z., clerk of our said court, at the courthouse thereof, in the county and State aforesaid, the .... day of ......, 19.., and in the ...... year of the commonwealth (*or* state).

Y. Z.,
Clerk.

Text page 133; Va. Code, § 6054; Barnes' W. Va. Code, Ch. 124, § 1.

3. Acceptance of Service.

I, the undersigned, hereby waive service on me of the within summons (*or* notice) and accept service thereof this .... day of ......, 19.., to have the same effect as though served by the Sheriff (*or* Sergeant) of ...... County (*or* City).

....

4a. Return on Summons, or Notice, Served on Individual in Person.

Executed on the .... day of ......, 192.., within the ...... of ......, by delivering a true copy of the within summons (*or* notice), in writing, to D. D. in person.

E. J., Sheriff (*or* Sergeant) of ......

Text page 138; Va. Code, §§ 6062 and 6041; Barnes' W. Va. Code, Ch. 121, § 1.

4b. Return on Summons, or Notice, Served on Individual in Person, Another Form.

Executed the within summons upon the within named ......

by delivering a copy thereof to him on the .... day of ......, 192..

J. C. L.,
Sheriff (*or* Sergeant) of ...... County
(*or* City of ......) Va. (*or* W. Va.)

Idem.

5a. (Va.) Return on Summons, or Notice, Served by Delivering Copy to a Member of Defendant's Family.

D. D. could not be found at his usual place of abode on the .... day of ......, 192.., so the within summons (*or* notice) was executed on the said .... day of ...... 192.., within the ...... of ......, by delivering a true copy of the same, in writing, and giving information of its purport to M. D., D. D.'s wife, (*or other member of D. D.'s family, but not a temporary sojourner or guest*), who was found at D. D.'s usual place of abode, and who is a member of D. D.'s family, and above the age of sixteen years.

E. J., Sheriff (*or* Sergeant) of ......

Idem.

5b. (W. Va.) Return on Summons, or Notice, Served by Delivering Copy to Member of Defendant's Family.

D. D. could not be found on the .... day of ......, 192.., so the within summons (*or* notice) was executed on the said ...... day of ......, 192.., within the county of ......, by delivering a true copy of the same, in writing, at D. D.'s usual place of abode, to M. D., D. D.'s wife (*or other member of D. D.'s family*), who was found at D. D.'s usual place of abode, and who is a member of D. D.'s family, and above the age of sixteen years, and giving information of the purport of said copy to the said M. D. to whom it was delivered.

E. J., Sheriff of ...... County.

Idem.

6a. (Va.) Return on Summons, or Notice, Served by Posting Copy on Defendant's Front Door.

Neither D. D. nor any person who is a member of D. D.'s family, and above the age of sixteen years, could be found at D. D.'s usual place of abode on the .... day of ......, 192.., so the within summons (*or* notice) was executed on the said .... day of ......, 192.., within the ...... of ......, by leaving a true copy of the same in writing, posted at the front door of said place of abode.

E. J., Sheriff (*or* Sergeant) of ......

Idem.

6b. (W. Va.) Return on Summons, or Notice, Served by Posting Copy on Defendant's Front Door.

Neither D. D.'s wife, nor any other person who is a member of D. D.'s family and above the age of sixteen years, could be found at D. D.'s usual place of abode, nor could D. D. be found, on the .... day of ......, 192.., so the within summons (*or* notice) was executed on the said .... day of ......, 192.., within the county of ......, by leaving a true copy of the same in writing, posted at the front door of said place of abode.

E. J., Sheriff of ...... County.

Idem.

7. Return on Summons, or Notice, Served by a Private Person Where the Defendant Is a Resident of the State.

State of ......

County (*or* City) to-wit:

Before me, A. B., a Notary Public (*or other officer competent to administer an oath*) in and for said ......, this day personally came C. D., who, after being by me duly sworn, on his oath says that he executed the within summons (or served the within notice) on the within named E. F. in ...... County (*or* City of

......), State of ......, on the .... day of ......, 192.., by then and there (*stating the appropriate mode of service*).

Taken, sworn to and subscribed before me in my said ...... this .... day of ......, 192..

A. B., Notary Public (*or other officer*).

(*If a notary public, state when commission will expire.*)

Idem.

8a. (Va.) Return on Summons, or Notice, Served Personally on a Non-Resident Natural Person Outside of State.

State of ......

County (*or* City) of ......, to-wit:

This day A. A. personally appeared before me, Y. Z., a notary public in and for the county (*or* city) and state aforesaid, and made oath that he is not a party to, or otherwise interested in, the subject matter in controversy in the within cause; that he served the within summons (*or* notice) on the .... day of ......, 192.., by delivering a true copy of the same, in writing to D. D., who is the defendant herein, in person, in the county (*or* city) of ......, and that the said D. D. is a non-resident of the State of Virginia.

....

Subscribed and sworn to before me this .... day of ......, 192.., in the county (*or* city) and state aforesaid; in testimony whereof, I have hereunto set my hand and seal the day, month and year last aforesaid.

(Seal) Y. Z., Notary Public.

Text page 140; Va. Code, § 6071; Barnes' W. Va. Code, Ch. 124, § 13.

8b. (W. Va.) Return on Summons, or Notice, Served Personally on a Non-Resident Natural Person Outside of State.

State of ......

County of ......, to-wit:

This day A. A. personally appeared before me, Y. Z., a notary public in and for the county and state aforesaid, and made oath that he served the within summons (*or* notice) on the .... day of ......, 192.., by delivering a true copy of the same, in writing, to D. D., who is the defendant herein, in person, in the county of ......, and that the said defendant is a non-resident of the state of West Virginia.

....

Subscribed and sworn to before me this .... day of ......, 192.., in the county and state aforesaid; in testimony whereof, I have hereunto set my hand and seal the day, month, and year last aforesaid.

(Seal) Y. Z., Notary Public.

Idem.

9. (Va.) Return on Summons, or Notice, Served on an Officer or Agent of a Domestic Corporation.

Executed on the .... day of ......, 192.., by delivering a true copy of the within summons (*or* notice) in writing, to D. D., in person, who is the president (*or other officer or agent as the case may be*) of the within mentioned defendant corporation, in the county (*or* city) of .... in which county (*or* city) the said D. D. resides (*or,* the said D. D.'s place of business is, *or* the principal office of the said corporation is located *as the case may be*).

E. J., Sheriff (*or* Sergeant) of ......

Text page 143; Va. Code, § 6063.

10. (Va.) Return on Summons, or Notice, Served on the Secretary of the Commonwealth as Statutory Agent of a Foreign Corporation.

Executed in Richmond, Virginia, on the .... day of ......, 192.., by serving true copies in duplicate of the within summons (*or* notice) in writing, upon the Secretary of the Commonwealth, who has been duly appointed by written power of attorney by the within mentioned defendant foreign corporation, as its statutory agent upon whom may be served all lawful process against (*or* notice to) such foreign corporation and who has been authorized to enter appearance in its behalf, all being done in pursuance of the statutes of Virginia for such cases made and provided.

E. J., Sheriff (*or* Sergeant) of ......

Text page 144; Va. Code, § 3845.

11. (Va.) Return on Summons, or Notice, Served upon a Foreign Corporation Where No Statutory Agent Has Been Appointed.

There being no statutory agent of the within mentioned defendant foreign corporation, the within summons (*or* notice) was executed on the .... day of ......, 19.., by delivering a true copy thereof to D. D., in person who is an agent of such corporation, in ...... which is the county (*or* city) in which he resides (*or* in which his place of business is).

E. J., Sheriff (*or* Sergeant) of ......

Idem.

12a. (W. Va.) Return on Summons, or Notice, Where Service Is Made upon a Domestic Corporation upon Its President.

Executed the within summons (*or* notice) upon the within named ......, a corporation, on the .... day of ......, 19.., by delivering on that day a copy thereof to ......, the president of said corporation, in the County of ...... in the state of West Virginia, that being the county and State wherein the said ......, president as aforesaid, resides.

J. C. L., Sheriff of ...... County, W. Va.

Text page 146; Barnes' W. Va. Code, Ch. 124, § 7.

12b. (W. Va.) Return on Summons, or Notice, Served upon a Domestic Corporation When It Cannot Be Had upon Its President or Other Chief Officer.

Executed the within summons (*or* served the within notice) upon the within named ......, a corporation, on the .... day of ......, 19.., by delivering on that day a copy thereof to ......, the treasurer (*or,* the secretary *or* cashier, *as the case may be*) of said corporation, in the county of ......, in the

State of West Virginia, that being the county and State wherein the said ......, treasurer as aforesaid, resides, the president or other chief officer of said corporation, and the person appointed pursuant to law to accept service of process for its, then being absent from said county of ......

J. C. L., Sheriff of ...... County, West Virginia.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

12c. (W. Va.) Return on Summons, or Notice, Served upon a Domestic Corporation by Delivering a Copy to a Director.

Executed the within summons (*or* notice) upon the within-named ......, a corporation, on the .... day of ......, 19.., by delivering on that day a copy thereof to ......, a member of the board of directors, (*or,* board of trustees, *or* visitors, *as the case may be*) of said corporation, in the County of ......, in the State of West Virginia, that being the county and State wherein the said ......, a member of the board of directors aforesaid, resides, the president or other chief officer of said corporation, and the person appointed pursuant to law to accept service of process for it, and the secretary, the treasurer and cashier, all and each of them being then absent from the said county of ......

J. C. L., Sheriff of ...... County, W. Va.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

12d. (W. Va.) Return on Summons, or Notice, Served on Person in Charge of Principal Office of the Corporation, under § 8, Chapter 54, Barnes' W. Va. Code.

In the absence from .... County, West Virginia, of ......, the president and chief officer of ......, the within named corporation, I executed the within and hereto annexed summons (*or* notice) within ...... County, West Virginia, this .... day of ......, 19.., as to said ......, a corporation, by delivering a true copy thereof to D. L. at the principal office and place of business of said corporation, he, the said D. L., being then and there the ...... of said corporation, and being then and there in charge of the principal office or place of business of said corporation, in the City of ...... in said ......County, West Virginia, and the said D. L., being a resident of the City of ...... in said County and State at the time of said service, there being when such service was made no attorney of record and fact or other person in said County upon whom service might be had for and on behalf of said corporation.

C. J., Sheriff of ...... County.
By E. F., Deputy Sheriff.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

12e. (W. Va.) Return on Summons, or Notice, Served upon a Domestic Corporation by Delivering a Copy of the Summons or Notice to a Depot or Station Agent.

Executed the within summons (*or* notice) upon the within-named ...... a corporation, on the .... day of ......, 19.., by delivering on that day a copy thereof to ......, a depot agent in the actual employment of the said corporation, in the County of ......, in the State of West Virginia, that being the county and State wherein the said ......, the depot agent in the actual employment of the said corporation, resides, the president or other chief officer of said corporation, and the person appointed pursuant to law to accept service of process for it, and the secretary, treasurer and cashier of said corporation, and the members of the board of directors thereof, all being absent from my county, and there being no other person within the State than the said ...... (the said depot agent) upon whom there can be service of said summons.

J. C. L., Sheriff of ...... County, W. Va.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

13. (W. Va.) Return on Summons, or Notice, Served on Attorney of a Corporation, under § 24, Chapter 54, Barnes' W. Va. Code.

Executed the within and hereto annexed summons (*or* notice) within ...... County, West Virginia, this .... day of ......, 192.., as to ...... within named corporation, by delivering a true copy thereof to ......, the attorney of record and fact, appointed pursuant to law, to accept service of process and notices and upon whom service might be had for said corporation, he being a resident of said County at the time of said service.

C. J., Sheriff of ...... County,
By H. J., Deputy Sheriff.

Adapted from Carlin's Hogg's Equity Procedure.

14. (W. Va.) Return on Summons, or Notice, Served on a Foreign or Non-Resident Domestic Corporation by Delivering a Copy of the Summons or Notice to the Auditor as Attorney for the Foreign or Non-Resident.

Executed the within and hereto annexed summons (*or* notice) within ...... County, West Virginia, this .... day of ......, 19.., as to ......, within named foreign (*or* non-resident domestic corporation) by delivering a true copy thereof to ...... auditor of the State of West Virginia, who is constituted by statute attorney in fact for and on behalf of the said ......, a foreign corporation doing business in this state (*or* a non-resident domestic corporation) with authority to accept service of process on behalf of said corporation and on whom service of process may be made in this state for and against said corporation.

C. J., Sheriff of ...... County.

Text page 148; Barnes' W. Va. Code, Ch. 124, § 24.
Adapted from Carlin's Hogg's Equity Procedure.

15a. (Va.) Return on Summons, or Notice, Served on a Common Carrier That Is Not a Corporation.

Executed on the .... day of ......, 192.., by delivering a true copy of the within summons (*or* notice) in writing to D. D. in person, who is a common carrier other than a corporation against whom this suit is brought for a liability (*or other reason*) as such (*or,* who is an agent, driver, captain, or conductor of any vehicle of F. F., who is a common carrier other than a corporation, against whom this case is brought for a liability as such), in the county (*or* corporation) of ......, wherein this cause was commenced.

E. J., Sheriff (*or* Sergeant) of ......

Text page 148; Va. Code, § 6067; Barnes' W. Va. Code, Ch. 124, § 9.

15b. (W. Va.) Return on Summons, or Notice, Served on a Common Carrier That Is Not a Corporation.

Executed the within summons upon the within named A. B. and C. D., partners as common carriers under the firm name of ...... (*or, if not partners, say common carriers*), operating as such the steamboat (*or whatever the means of common carrying may be*) ...... (*here insert the name of the boat*), by delivering a copy thereof to ......, the captain of said steamboat, on the .... day of ......, 192..

J. C. P., Sheriff of ...... County, W. Va.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

16. Order Permitting Return to Be Amended.

(*After the Style of the Cause.*)

Upon motion of the plaintiff by his counsel, the officer serving the summons to commence this suit hath leave to amend his return thereon so as to conform to the facts attending the service thereof; but such amendment is to be made in such manner as not to mutilate the return as originally indorsed upon said summons.

Text page 152.

17a. (Va.) The Affidavit for Service by Publication.

State of Virginia,

County (Corporation) of ......, to-wit:

(*Here give the style of the cause and the name of the court in which it is pending.*)

This day ......, the above named plaintiff (*or* agent for the above named plaintiff) personally appeared before me, ... a notary public in and for the county (*or* city) and state aforesaid, in my county (*or* city), and made oath, (1) that of the above named defendant ...... is not a resident of the State of Virginia, and his last known postoffice address is ...... (*or* his address is unknown), *or* (2) that due diligence has been used by or on behalf of the plaintiff to ascertain in what county or corporation the defendant ...... is, without effect, to-wit: (*here insert facts tending to show exercise of due diligence*) *or* (3) that process, directed to the officer of the county (*or* corporation) in which the defendant ...... resides, or is, has been twice delivered to such officer more than ten days before the return day and been returned without being executed, *or,* (4) that the children (*or* heirs, *or* creditors) of ...... now deceased, who are or may be interested in the subject to be divided or disposed of in this suit, if any such children (*or* heirs *or* creditors) there be, and their names are unknown.

Given under my hand this .... day of ......, 19..

....

Notary Public.

Text page 155; Va. Code, § 6069; State *v.* Young, W. Va., 117 S. E. 688.

17b. (W. Va.) The Affidavit for Service by Publication.

State of West Virginia,

County of ......, to-wit:

(*Here give the style of the cause and the name of the court in which it is pending.*)

Q. ...... personally appeared before me in my county and in the clerk's office aforesaid, and made oath that Wm. N. Powell and Amelia Powell, adults, and Henry Black and Fannie Jordan, infants, are not residents of the state of West Virginia (*or* that diligence has been used and process issued in vain as prescribed by Barnes' Code W. Va., Ch. 124, § 11) and that the children of Margaret Wilson, who was Margaret Roe, but now deceased, are or may be interested in the subject to be disposed of in this suit, if any such children there be, and their names are unknown.

Given under my hand this .... day of ......, 19..

....

Clerk of the Circuit Court of ...... Co.,
West Virginia.

Text page 155; Barnes' W. Va. Code, Ch. 124, § 11

18. (W. Va.) Affidavit for Summons by Publication against a Foreign Corporation.

A. B.
v. } Affidavit.
C. D. Co.

State of West Virginia, County (*or* City) of ...... to-wit:

This day A. B., the above named plaintiff, personally appeared before me, Y. Z., a notary public in and for the county (*or* city) and state aforesaid, in my county (*or* city) aforesaid and made oath that the C. D. Co., the above named defendant is a corporation, and that no person can be found in the said county (*or* city) of ......, upon whom the process in this cause can be legally served.

Given under my hand this .... day of ......, 19..

Y. Z., Notary Public.

Idem.

19a. (Va.) Order of Publication.

Virginia: In the Clerk's Office of the County of ...... in vacation, the .... day of ......, 19.., (*or* in the Court of ......)

A. B.
v. } In Chancery.
C. D.

The object of the above styled suit is to (*here briefly state its object*). And it appearing by affidavit filed according to law that C. D., the above named defendant, is not a resident of this state (*or as the case may be*) it is therefore ordered that the said C. D. do appear within ten days after due publication of this order, in the clerk's office of our said ...... Court, and do what is necessary to protect his interests. And it is further ordered that this order be published once a week for four successive weeks in the ......, a newspaper published in the county of ......, Virginia, and the newspaper prescribed by our said ...... Court (*or*, and no newspaper being prescribed by our said ...... Court, the newspaper hereby directed). And it is further ordered that a copy of this order be posted at the front door of the courthouse of the ...... on or before the next succeeding rule day, and that another copy of this order be mailed to the defendants to the postoffice address given in the affidavit.

C. C., Clerk.

W. A. J., Counsel.

Text page 155; Va. Code, § 6070.

19b. (W. Va.) Order of Publication.

West Virginia: At rules held in the Clerk's Office of the Circuit Court of ...... County, on the .... day of ......, 19..

A. B.
v. } In Chancery.
C. D.

The object of the above styled suit is to (*here briefly state its object*). And, it appearing by affidavit filed according to law that C. D., the above named defendant, is not a resident of this state (*or as the case may be*), it is therefore ordered that the said C. D. do appear within one month after the date of the first publication of this order in the clerk's office of our said circuit court, and do what is necessary to protect his interests. And it is further ordered that this order be published once a week for four successive weeks in the ......, a newspaper published in our said county (*or* city) of ......, which said newspaper was designated by the party directing this order (*or*, no newspaper being designated by the party directing this order, the paper directed by the circuit court, or, the court making no direction, the paper hereby prescribed) and it is further ordered that a copy of this order be posted at the door of the courthouse of this county at least twenty days before the rendering of the judgment (*or* decree) in this cause.

C. C., Clerk.

W. A. J., Counsel.

Text page 156; Barnes' W. Va. Code, Ch. 124, § 12.

20. (W. Va.) Form of Affidavit Authorizing an Order of Publication against a Corporation Which Has Failed to Comply with Section 24, Chapter 54, of the Code of West Virginia.

State of West Virginia,
County of ......, ss.

Before the undersigned authority, this day personally appeared C. E. H., who, after being duly sworn, says that he is the attorney for the plaintiff in the case of D. S. B., plaintiff, against the O. R. R. Co., a corporation, and the B. & O. R. Co., a corporation, defendants, pending in the circuit court of the county and state aforesaid.

Affiant further says that there is no person that can be found in the county of ...... upon whom to serve process as to the said O. R. R. Co., a corporation. This affiant further says that there is no person now residing in the state of West Virginia who has been appointed under the provisions of the statute of West Virginia, section 24 of chapter 54 of the Code, to accept service of process or notice on behalf of the said O. R. R. Co., a corporation, and upon whom service of any process or notice may be had or made as to the said O. R. R. Co., a corporation; and this affiant says that the said O. R. R. Co. under and by virtue of the statute of West Virginia, section 24, chapter 54, of the Code, with which the said O. R. R. Co. has failed to comply, as hereinbefore stated, and by reason of such noncompliance therewith, affiant is advised and so states, may be proceeded against as a nonresident of the state of West Virginia.

....

Taken, sworn to and subscribed before me, this, the .... day of ......, 19..

....

Notary Public (Clerk, etc.)

Adapted from Carlin's Hogg's Equity Procedure.

21. (W. Va.) Form of Order of Publication Where Corporation Has Failed to Comply with Section 24 of Chapter 54 of the Code of West Virginia.

State of West Virginia,

At rules held in the Clerk's Office of the Circuit Court of the County of ......, beginning on Monday, the .... day of ......, 192.., the following order was entered:

A. B.
v.
C. D. Company, a corporation, and
E. F. Company, a corporation.
} In Chancery.

The object of the above entitled cause is (*here state the object of the suit*).

It appearing by affidavit filed in the above entitled cause that C. D. Company is a corporation, and that there can be no person found in the County of ...... upon whom to serve process relating to the said C. D. Company; and it further appearing from affidavit filed therein that there is no person now residing in the State of West Virginia, who has been appointed under the provisions of the Statute of West Virginia, sec. 24, ch. 54, of the Code to accept service on behalf of the said C. D. Company, a corporation, and upon whom service of any process or notice may be had or made as to the said C. D. Company, a corporation; and it further appearing from affidavit filed in the above entitled cause that the said E. F. Company is a non-resident of the State of West Virginia, it is ordered that the said C. D. Company and the said E. F. Company do appear here within one month from the date of the first publication hereof and do what is necessary to protect their interests.

A Copy.
Teste:
R. E. M., Clerk.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

22a. (Va.) Clerk's Certificate of Posting.

I, ..., Clerk of the ...... Court of ......, do hereby certify that the above order of publication was published once a week for four successive weeks in the ......, the newspaper prescribed in said order (*or as the case may be*); that it was duly posted at the front door of the courthouse of the ...... Court of ......, on the .... day of ......, which was on (*or* before) the next succeeding rule day after it was entered; and that a copy thereof was mailed to each of the defendants to the post office address given in the affidavit.

....
Clerk of the ...... Court.

Text page 157; Va. Code, § 6070.

22b. (W. Va.) Clerk's Certificate of Posting.

State of West Virginia,
County of ......, to-wit:

Before the undersigned authority this day personally came J. G. M., who after being duly sworn, says that he posted the foregoing order of publication at the front door of the courthouse of the County of ...... (the county wherein the court is held), in the State of West Virginia, for twenty days prior to the first day of the ...... term, 192.., of said court.

....

Taken, sworn to and subscribed before me this the .... day of ......, 19..

....
(*Official Character.*)

Text page 157; Barnes' W. Va. Code, Ch. 130, § 32

23a. (Va.) Newspaper Certificate of Publication.

I, ..., editor of ......, a paper published in the County (City) of ......, State of ......, do hereby certify that the foregoing order of publication was published in the said paper once a week for four successive weeks, commencing on the .... day of ......, 192..

............, Editor,
Publisher, etc.

Text page 157; Va. Code, § 6070.

23b. (W. Va.) Newspaper Certificate of Publication.

I, ..., the editor of the (*here insert the name of the newspaper*) a newspaper published in the county of ...... (*the county in which the order is entered*), a state of ......, do certify that the foregoing order of publication was published in said newspaper once a week for four successive weeks, beginning on the .... day of ......, 192..

Given under my hand this the .... day of ......, 192..

....
Editor of......

Text page 157; Barnes' W. Va. Code, Ch. 130, § 32.
Adapted from Carlin's Hogg's Equity Procedure.

II. Orders at Rules.

24. Order Appointing a Guardian Ad Litem.

At rules held in the clerk's office of the ...... Court of the ...... of ......, on the .... day of ......, in the year 19..

James Hart. v. Jane Hart, widow, and the same Jane as administratrix with the will annexed of the estate of Thomas Hart, deceased; John Hart, Henry Wells, and Mary Wells, his wife, late Mary Hart, and Anne Hart.	}	In Chancery.

On motion of the complainant, by counsel, J. M. S., a discreet and competent attorney-at-law, is assigned guardian to the defendant, Anne Hart, who is an infant, under the age of twenty-one years, to defend her in this suit.

25. Rule to Plead.

(*Title of the Cause.*)

The summons awarded in this cause having been returned executed on the defendant, C. D., and the bill of plaintiff having been filed, and the said C. D., who has heretofore (*or* on this day) appeared, yet failing to plead, answer or demur to the said bill, a rule is given to the said defendant to plead, answer, or demur to the said bill at the next rules; and if the said C. D. shall then fail to plead, answer or demur to the said bill, the same will be taken for confessed as to him.

Text page 160.

26. Decree Nisi.

(*Title of the Cause.*)

The summons awarded in this cause having been returned executed on the defendant, C. D., and the bill of the plaintiff having been filed and the said C. D., still failing to appear and plead, answer or demur to the said bill, on the motion of the plaintiff, it is ordered that it be entered of record that the said bill will be taken for confessed as to the said C. D., if the said C. D., shall continue in default.

Text page 161.

27. Order Taking Bill for Confessed, and Setting Cause for Hearing.

(*Title of the Cause.*)

The defendant, C. D., not yet having appeared and pleaded, answered or demurred, to the plaintiff's bill, the same is taken for confessed as to the said defendant, and the cause is set for hearing as to him. (*Or,* the defendant, C. D., who has appeared to this suit, still failing to plead, answer or demur to the plaintiff's bill, the same is taken for confessed as to the said defendant, and the cause is set for hearing as to him.)

Text page 162.

28. Order Filing Answer, Replication and Setting Cause for Hearing.

(*Title of the Cause.*)

The defendant, C. D., apppeared and filed his answer to the bill of the plaintiff, and the plaintiff thereupon replied generally to the said answer, and the cause is set for hearing as to the said defendant.

Text page 162.

29. Order Setting Cause for Hearing on Defendant's Motion.

(*Title of the Cause.*)

Four months having elapsed since the answer of C. D., a defendant in this cause, was filed, and the plaintiff herein not having set the cause for hearing as to such defendant, and not having filed exceptions thereto, on motion of the said defendant this cause is set for hearing as to him.

Idem.

30. Order Filing Plea or Demurrer.

(*Title of the Cause.*)

The defendant, C. D., appeared and filed a plea (*or* demurrer) to the plaintiff's bill, and the said plea (*or* demurrer) is set down for argument.

(*If it is a demurrer, add after the words "plaintiff's bill" the words* "and the plaintiff joined in the said demurrer.")

Idem.

31. Order Taking Issue on a Plea.

(*Title of the Cause.*)

The defendant, C. D., appeared and filed a plea to the plaintiff's bill, and the plaintiff took issue upon the statements made in the said plea, and it is ordered that the said issue be tried by a jury.

Idem.

III. Affidavits to Any Pleading.

32a. (Va.) Affidavit to a Bill.

State of Virginia,
...... of ......, to-wit:

I, ..., a notary public (*or other officer*) for the ...... and State aforesaid, hereby certify that ...... personally appeared before me in my ...... and State aforesaid, and made oath that the allegations contained in the foregoing bill, which he makes of his own knowledge, are true, and that all other matters therein stated he believes to be true.

Given under my hand this .... day of ......, 19..

....
(*Official Character.*)

32b. (Va.) Affidavit to Any Pleading, Another Form.

State of Virginia,
...... of ......, to-wit:

......, the complainant (*or* respondent) named in the foregoing bill (*or* answer, *or* plea, *as the case may be*), being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information, and that so far as they are therein stated to be upon information he believes them to be true. (*If a bill of interpleader add,* and that there is no collusion between him and either of the defendants in said bill.)

.... Complainant, (*or* Respondent.)

Taken, sworn to and subscribed before me ......, a notary public (*or other officer*) of and for the ...... and State aforesaid, in my ...... aforesaid, this .... day of ......, 19..

....
(*Official Character.*)

32c. (W. Va.) Affidavit to Any Pleading.

State of West Virginia,
...... of ......, to-wit:

......, the plaintiff (*or* defendant, *as the case may be*) named in foregoing bill (*or* answer, replication, *or* plea, *as the case may be*), being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be upon information, and that so far as they are therein stated to be upon information, he believes them to be true.

.... Plaintiff, (*or* Defendant.)

Taken, sworn to and subscribed before me this .... day of ......, 19..

....
(*Official Character.*)

My commission expires on the .... day of ......, 19..

IV. Miscellaneous Original Bills.

33a. Bill of Discovery Merely.

In the ...... Court of the ...... of ......, ...:

A. M. and D. M.
v.
R. B.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your complainants, A. M. and D. M., respectfully represent:

(1) That by a certain deed of assignment, dated the .. day of ......, 19.., made between J. D., of ......, ..., party of the first part, and your complainants, parties of the second part, the said J. D. bargained and sold, assigned and transferred, and set over to your complainants certain property, goods, choses in action, and securities, for money therein particularly mentioned, in trust for the benefit of his creditors, which said deed

of assignment is herewith filed, marked "Exhibit A," and made a part of this bill; and,

(2) That at the date of the assignment aforesaid, there was due and owing to the said J. D. from one R. B., of the said ...... of ......, the full and just sum of ...... dollars, which was the balance due on an account between him, the said R. B., and the said J. D., the particulars of which account are set forth in a paper herewith filed, marked "Exhibit X," and made a part of this bill; and,

(3) That since the date of the assignment aforesaid your complainants have repeatedly applied to and requested the said R. B. to pay them the said sum of ...... dollars, so justly due from him as aforesaid; that the said R. B. failed and refused to comply with said request, whereupon your complainants were compelled to, and did commence an action at law in the ...... court of ......, to obtain payment thereof; and,

(4) That the said R. B. hath pleaded in such suit, and given notice of a set-off in the same, and hath delivered a particular of such set-off, which, down to the date of such assignment, corresponds with the credit side of the account set forth in the aforesaid "Exhibit X," but that such defendant hath included in the said particular, three several items, one of ...... dollars, one of ...... dollars, and one of ...... dollars, which were charged for goods sold and delivered in the month of ......, 19.., after the aforesaid assignment; and,

(5) That the said R. B., at the time of the sales and delivery of the said three several items, in the month of ......, 19.., had knowledge of the aforesaid assignment to your complainants; and,

(6) That your complainants have no means of proving such knowledge on the part of the said R. B. in the action at law aforesaid, except by means of a discovery of the matters hereinbefore stated from said defendant.

In consideration whereof, and to the end that justice may be done, your complainants pray that the said R. B. may be made a party defendant to this bill, and required on his oath to answer and say when the said several items, one of ...... dollars, one of ...... dollars, and one of ...... dollars, were sold and delivered, and when the same were charged, and whether or not at the time the same were sold and delivered, he, the said R. B., knew of the said assignment to your complainants; and that said defendant may make a full and true discovery of all the matters aforesaid.

A. M.,
D. M.,
Complainants.

J. C., Counsel.
Append Affidavit.
Virginia.

State of Virginia,
...... of ......, to-wit:

I, ..., a notary public for the county and state aforesaid hereby certify that ...... personally appeared before me in my county aforesaid, and made oath that the allegations contained in the foregoing bill, which he makes of his own knowledge, are true, and that all other matters therein stated he believes to be true.

Given under my hand this .... day of ......, 19..

............., Notary Public.

West Virginia.

State of West Virginia,
...... of ......, to-wit:

......, the plaintiff named in the foregoing bill being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true. (*If affidavit is made in a representative capacity substitute for the above after* "says," "he believes the facts and allegations contained to be true.")

....
(*or designate representative capacity.*)

Taken, sworn to and subscribed before me this .... day of ......, 19..

....
Notary Public.

My commission expires on the .... day of ......, 19..

Text page 204.

33b. Bill of Discovery in Aid of Defense at Law.

In the ...... Court of the ...... of ......, ...:

C. D. and L. M. v. E. F.	In Chancery.	Bill.

To the Hon. ......, Judge of the said Court:

Your orators, C. D. and L. M., respectfully represent:

(1) That the said E. F. has instituted in the ...... court of the ...... of ...... his certain action of *assumpsit* against your orators, in which action the said E. F. seeks to recover of your orators the price of a certain horse alleged to have been sold by the said E. F. to your orators, the price thereof in the bill of particulars filed with the declaration in said suit being alleged to be $200.00. Your orators have filed in the said action two pleas: 1st, the plea of *non-assumpsit;* and 2nd, a special plea to the effect that the said E. F. warranted the said horse to be sound and free from defect.

(2) Your orators allege that the said E. F. made his bill of sale of the said horse to your orators, in which bill of sale the said E. F. covenanted to warrant, and did warrant the said horse to be sound and free from defect. The said bill of sale has been lost or destroyed, and your orators are unable to produce the same on the trial of the said action, and your orators are unable to establish the said covenant by other testimony that the statement of the said E. F.

(3) And your orators further allege and charge that the truth of the matters aforesaid would fully appear in case the said E. F. would set forth the covenants contained in the said bill of sale, and specially the covenant aforesaid warranting the said horse to be sound and free from defect. Your orators can and will establish on the trial of the said action by other evidence, that at the time of the sale of the said horse to your orators by the said plaintiff, the said horse was not sound and free from defect, but on the contrary thereof was suffering then and for a long time thereafter, from the disease called the ......, and of that disease subsequently died, and was, and continued, at and from the

time of sale, or shortly thereafter, until his death, wholly valueless to your orators.

Your orators are advised that they can not safely defend themselves on the trial of said action without a discovery from the said E. F. touching said covenant in said bill of sale, and concerning the existence thereof, and forasmuch as your orators are remediless in the premises save by the aid of a court of equity, your orators pray that the said E. F. may be made a party defendant to this bill, and required to answer the same on his oath; that the said defendant may make a full and true discovery of all the matters aforesaid, and say whether or not at the time of selling the said horse to your orators, he, the said E. F., did not make a bill of sale of the said horse to them; and that the said E. F. disclose and say what were the covenants made by him in the said bill of sale according to the best of his knowledge, remembrance, information and belief. Your orators pray that proper process may issue. And they will ever pray, etc.

C. D.
L. M.
By Counsel.

Q. M., Counsel.

(*Here add the proper verification as shown in Form 33a.*)

Idem.

34. Bill by Surety to Be Subrogated to Rights of Creditor.

In the ...... Court of the ...... of ......, ...:

A. B. v. C. D., D. D., E. F., G. H. and J. K.	In Chancery.	Bill.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., respectfully represents:

(1) That on the .... day ......, 19.., one C. D. being indebted to E. F. in the sum of ...... dollars, for so much money by the said E. F., then loaned to the said C. D., the said C. D.,

and your orator, as his security, made and delivered to the said E. F. a promissory note of that date, and thereby promised to pay to the said E. F. the said sum of money in *one year* after the date thereof, with interest thereon at the rate of *six* per cent. per annum, which said promissory note was signed by the said C. D. as principal thereto, and by your orator as security for the said C. D., and without any consideration moving from the said C. D. or E. F. to your orator.

(2) Your orator further represents that further to secure payment of the principal sum and interest above mentioned the said C. D. and D. D., his wife, on the .... day of ......, 19.., by their mortgage deed of that date, conveyed to the said E. F., in fee simple, the following described real estate, situate in the said county of ......, to-wit: (*here describe the premises*); subject, however, to a condition of defeasance upon the payment of the said principal sum and interest aforesaid, according to the tenor and effect of the said promissory note, which said deed was on the .... day of ......, 19.., duly acknowledged, and afterwards, on the ....day of ......, 19.., filed for record in the office of the clerk of the ...... court of ...... county, and duly recorded in Deed Book No. ....., at page ......, as will more fully appear from an attested copy of said deed herewith filed as "Exhibit A," and made part of this bill.

(3) Your orator further represents that soon after the execution and delivery of said promissory note and mortgage deed, and before the said note became due, the said C. D. became wholly insolvent, and unable to pay the amount due on the said promissory note.

(4) Your orator further represents that after the maturity of the said promissory note, on the .... day of ......, 19.., E. F., the holder thereof, demanded of your orator, as security aforesaid, the amount due on said note, and your orator was compelled to, and did pay to the said E. F., the full amount due thereon, to-wit: the sum of ...... dollars; which said payment was indorsed upon said note by the said E. F., as will more fully appear from the said promissory note, now held by your orator, and the endorsement thereon, ready to be produced upon the hearing of this cause; a copy of the same is hereto

attached, marked "Exhibit B." and made a part of this bill of complaint.

(5) Your orator further represents that by reason of the insolvency of the said C. D., your orator is in danger of losing the amount so paid by him as security as aforesaid, and that in justice and in equity your orator is entitled to be subrogated to all the security, including said mortgage lien, held by the said E. F.

(6) Your orator further represents, upon information and belief, that one G. H. and J. K. have or claim some interest in the mortgaged property aforesaid, as purchasers, judgment creditors or otherwise, the precise nature of which is unknown to your orator, but such interests, if any there be, have accrued since, and are subject to the rights of your orator, under the mortgage aforesaid.

Your orator therefore prays that the said C. D., D. D., E. F., G. H. and J. K. be made parties defendant to this bill and required to answer the same (*In Virginia insert* but answer under oath is hereby waived); that proper process issue; that upon the hearing thereof, the court will decree that your orator be subrogated to all the rights and benefits of the said mortgage lien possessed by the said E. F.; that an account may be taken in this behalf, by or under the direction of the court, of the amount due your orator, as aforesaid; that the defendant, C. D., may be decreed to pay your orator whatever sum shall appear to be due to him upon the taking of said account, together with the costs of this proceeding, by a short day to be fixed by the court; and that in default of such payment, the said premises may be sold, as the court shall direct, to satisfy the amount due your orator, and the costs; and that your orator may have such other or further relief in the premises as equity may require and to the court shall seem meet.

A. B.
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

35. Bill for the Removal of a Trustee Because of Misconduct in His Management of the Trust Fund, for an Injunction and a Receiver.

In the ...... Court of the ...... of ......, ...:

A. B., B. B., and C. B. v. C. D., and E. F.	In Chancery.	Bill.

To the Hon. ......, Judge of the said Court:

Your complainants, A. B., B. B., the wife of A. B., and C. B., the daughter and only child of A. B. and B. B., respectfully represent unto Your Honor:

(1) That on the .... day of ......, 19.., a certain deed of conveyance of that date was executed between your complainants A. B. and B. B., his wife, of the one part, and C. D. and E. F., the defendants hereinafter named, of the other part, which said deed is in the words and figures and to the purport following, that is to say: (*here set our copy of deed verbatim*); as by the said deed, ready to be produced in court, will appear.

(2) Your complainants further represent that the defendant, C. D., has principally acted in the trust of the said deed, and has, by virtue thereof, from time to time, received considerable sums of money and other effects, but he has applied only a small part thereof upon the trusts of the said deed, and has applied and converted the residue thereof to his own use; and, in particular, the said C. D. has, within a few months past, received a considerable sum of money from the estate and effects of the said B. B. and C. B., the whole of which he has applied to his own use.

(3) Your complainants further represent that they have repeatedly applied to the defendants for an account of the said trust property received and possessed by them, and of their application thereof. And your complainants well hoped that the defendants would have complied with such reasonable request, as in equity they ought to have done. But now so it is, the defendants combining and confederating and contriving so to wrong and injure your complainants in the premises, absolutely refused to comply with such requests; and pretend that

the trust property and effects possessed and received by them were to an inconsiderable amount, and that they have duly applied the same upon the trusts mentioned in said deed. Whereas your complainants charge the contrary of such pretenses to be the truth; and that so it would appear if the defendants would set forth, as they ought to do, a full and true account of all and every the said trust property and effects which they have respectively possessed and received, and of their application thereof.

(4) Your complainants further represent that the defendant, C. D., threatens and intends to use other parts of the said trust property, and to apply the same to his own use, and will do so unless he is restrained therefrom by the injunction of this court: that both said defendants ought to be removed from being trustees under said deed, and that some other person or persons ought to be appointed by this court, as such trustee in their place and stead; and that in the meantime some proper person ought to be appointed to receive, take charge of and collect the said trust property.

Your orator and oratrixes therefore pray that the said C. D. and E. F. be made parties defendant to this bill, and be required to make full and direct answer to the same (*in Virginia insert* but answer under oath is hereby waived); that proper process issue; that the said defendants in their answers be required to set forth a true and perfect account in items of all the trust funds and effects received by them, respectively, by virtue of the said deed, and of their application thereof; and that upon the hearing thereof an account may be taken of all and every the said trust property and effects, which have, or but for their wilful default or neglect might have been received by them, or either of them, or by any other person or persons, by their or either of their order, or to their or either of their use; and also an account of their application thereof; and that the defendants may respectively be decreed to pay what shall appear to be due from them upon such account; and that the defendants may be removed from being trustees under the said deed; and that two other persons may be appointed trustees under the said deed in their place and stead; and that in the meantime some proper person may be appointed to receive and collect the said trust estate and effects; and that your orator and oratrixes may have such other and further relief in the premises as equity may require and to your honor shall seem meet.

A. B., B. B., and C. B.
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

36. Bill to Reform or Correct a Writing on the Ground of Mistake.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your oratrix, A. B., respectfully represents:

(1) That heretofore on or about the .... day of ......, 19.., a certain C. D., of the said ......, agreed with your oratrix to purchase from her a certain house and farm in the neighborhood of ...... in the County of ......, for the sum of $8,500.00, $4,500.00 to be paid on the .... day of ......, 19.., the balance in four equal annual payments, with interest, to be secured by notes with security, and to remain a lien on the property sold. On the payment of the said $4,500.00 the said A. B., was to execute to the said C. D., a good and sufficient deed for said property. It was further agreed that there are fifty-two acres of land in the said farm. The grain growing on the farm was to belong to the said C. D. Full possession was to be given on the .... day of ......, 19..

(2) And your oratrix further alleges, that in committing the said agreement to writing, the stipulation that the notes for the four last payments were to bear interest was, by mistake, omitted; and the agreement is therefore silent in regard to the interest on the deferred payments, though it was intended by your oratrix and also by the said C. D., that the notes should bear interest, and that they should be so written. The said agreement, as written, is herewith filed as a part of this bill, marked "Exhibit A."

(3) And your oratrix further alleges, that the said C. D. has taken possession of the said house and farm so purchased, and has paid the first payment of $4,500.00 on the purchase thereof.

(4) But the said C. D., not regarding his said agreement so made with your oratrix, but contriving and intending to deceive and defraud your oratrix in this behalf, has always hitherto delayed and refused to perform his agreement to give his notes bearing interest according to the stipulation entered into with your oratrix, but omitted by mistake in committing the same to writing; although your oratrix is ready and willing and has always been ready and has offered to give and tendered to the said C. D. a good and sufficient deed for the said property, whenever the said notes bearing interest should be given to your oratrix by the said C. D. And the said C. D., amongst other things, pretends that, as the stipulation between him and your oratrix to pay interest on the said notes is not contained in the said written agreement, he is not bound by the said stipulation, and is required only to give notes without interest for the last payments. But your oratrix is advised that this honorable court has the power to reform and rectify said written agreement so defective by omission and mistake, so as to make it conform to the true agreement entered into by your oratrix and the said C. D., by inserting in it the clause alleged as aforesaid to have been omitted by mistake; and that, when the said agreement is so reformed and rectified, this honorable court has the power of enforcing a specific performance of the contract as reformed and rectified, by compelling the said C. D. to give his notes bearing interest to your oratrix, in accordance with the rectified agreement in writing.

Your oratrix therefore prays that the said C. D. may be made defendant to this bill and required to answer the same (*In Virginia add,* but answer under oath is hereby waived); that proper process issue; that the said agreement, as committed to writing, may be reformed and rectified by inserting in it the clause omitted by mistake, so that the notes for the four deferred payments of the purchase money of the said house and farm shall bear interest; that the said C. D. may be decreed to give his notes bearing interest from the .... day of ......, 19.., to your oratrix, in accordance with said rectified instrument of writing, and to accept from your oratrix a good and sufficient conveyance of the said house and farm; and that your oratrix may have such other and further relief as her case may require and to equity shall seem meet.

A. B.
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

37. Bill to Impeach a Decree on the Ground of Fraud.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., respectfully represents:

(1) That T. B., deceased, your orator's late father, during his life, and on or about the .... day of ......, 19.., was seized in his *demesne,* as of fee, of and in the real estate hereinafter particularly described; and by indenture of that date, made between the said T. B., of the one part, and C. D., the defendant hereinafter named, of the other part, the said T. B., in consideration of $......, bargained, sold and conveyed unto the said C. D., his heirs and assigns, all, etc. (*describe the mortgaged premises*), subject to redemption on payment of the said principal money and lawful interest at the time therein mentioned, and long since past; as by said indenture, reference being thereto had, will more fully appear.

(2) Your orator further showeth that the said T. B. departed this life on or about the .... day of ......, 19.., leaving this plaintiff his heir-at-law and only child, then an infant under twenty-one years of age, that is to say of the age of seven years or thereabouts, him surviving.

(3) And your orator further showeth that during your orator's minority, on or about the .... day of ......, 19.., the said C. D., filed his bill of complaint in this honorable court against

the plaintiff for a foreclosure of the plaintiff's right and equity of redemption in the said mortgaged premises; but your orator was not represented in such bill to be an infant; and the said C. D. caused and procured one L. N., since deceased, who acted in the management of the affairs of your orator's said father, to put in an answer in the name of your orator, and without ever acquainting your orator, of any of his friends or relations therewith; in which said answer a much greater sum was stated to be due from your orator on the said mortgage security to the said C. D., than in fact was really owing to him, and for which it was untruly stated that the mortgaged premises were an insufficient security. And in consequence of such answer being put in, the said C. D., afterwards, in conjunction with the said L. N., on or about the .... day of ......, 19.., obtained an absolute decree of foreclosure against your orator which your orator has only lately discovered, and of which your orator had no notice, and in which said decree no day is given to your orator, who was an infant when the same was pronuonced, to show cause against it when he came of age as by the said proceedings, now remaining as of record in this honorable court, reference being thereto had, will more fully appear.

(4) And your orator further showeth that he, your orator, on the .... day of ......, 19.., attained the age of twenty-one years, and shortly afterwards, having discovered that such transactions had taken place during his minority, as aforesaid, by himself and his agents, represented the same to the said C. D., and requested him to deliver up possession of the said mortgaged premises to your orator, on being paid the principal money and interest, if any, actually and fairly due thereon, which your orator offered, and has at all times been ready to pay, and which would have been paid by the personal representatives of the said T. B., out of his personal assets during your orator's minority, had any application been made for that purpose. And your orator hoped that the said C. D. would not have insisted on the said decree of foreclosure, so fraudulently obtained as aforesaid, but would have permitted your orator to redeem the said mortgaged premises, as he ought to have done. But now so it is, the said C. D. pretends that the said decree of foreclosure was fairly and properly obtained, and that a day was therein given your or-

ator, when of age, to show cause against the same, and that your orator has neglected to do so, and that the plaintiff is neither entitled to redeem, nor to travel into the said accounts; whereas, your orator charges the contrary thereof to be true, and that your orator attained the age of twenty-one years only on the ....day of ......, 19.., and that he has since discovered the matters aforesaid by searching the proper offices of this honorable court; and your orator expressly charges that, under the circumstances aforesaid, the said decree, so fraudulently obtained as hereinbefore mentioned, ought to be set aside, and your orator ought not to be precluded thereby, or in any other manner, from redeeming the said mortgaged premises of which the said C. D. has possessed himself by such means aforesaid.

Your orator therefore prays that the said C. D. may be made a party defendant to this suit, and to require to answer the same, (*In Virginia add* but answer under oath is hereby expressly waived); that the decree of foreclosure made, for the reasons and under the circumstances aforesaid, be set aside and declared to be fraudulent and void; that an account may be taken of what, if anything, is now due to the said C. D., for the principal and interest on said mortgage; that an account may be also taken of the rents and profits of the said mortgaged premises which have, or without his wilful default might have, been received by or on behalf of the said C. D., and if the same shall appear to be more than the principal and interest on said mortgage, then that the residue thereof may be paid over to your orator, and that your orator may be at liberty to redeem the said mortgaged premises, on the payment of the principal and interest, if any remain due on said security; that the said C. D. may be decreed, on being paid such principal sum and interest, to deliver up possession of said mortgaged premises, free from all incumbrances, to your orator or as he shall appoint; and grant unto your orator such other further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

38. Bill for the Establishment and Enforcement of a Trust.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., respectfully represents:

(1) That on the .... day of ......, 19.., plaintiff employed the defendant, C. D., as his agent to purchase for him the following described real estate: (*Here describe the real estate, or,* such real estate as the defendant might in his judgment deem advisable to purchase as an investment) and furnished him for said purpose the sum of ...... dollars.

(2) That the defendant accepted such employment and as such agent on the .... day of ......, 19.., purchased said real estate, and paid therefor of plaintiff's money the sum of ...... dollars:

(3) That the defendant, without the knowledge of consent of the said plaintiff, took the deed of conveyance for said real estate in his own name.

(4) That on the .... day of ......, 19.., plaintiff demanded of said defendant an account and payment of said money, and a deed to plaintiff for said real estate, all of which was refused by said defendant.

Plaintiff therefore prays that the said C. D. may be made a party defendant to this bill and required to answer the same (*In Virginia add* but answer under oath is hereby waived); that proper process issue; that the defendant be compelled to account with him, and that he have a decree against the said defendant for ...... dollars residue of said sum of money placed in the hands of defendant as aforesaid, by this plaintiff; that defendant be required to convey said real estate to the plaintiff or upon his failure so to do, a special commissioner be appointed for that purpose; and grant unto this plaintiff such other further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

39. Bill by a Trustee to Obtain the Advice of the Court Touching His Duties and for an Auditing of His Accounts.

In the ...... Court of the ...... of ......, ...:

M. L. and O. P.
v.
A. B., et als.
In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orators, M. L. and O. P. respectively represent:

(1) That on the .... day of ......, 19.., one A. B., desiring to make voluntary settlement in trust of the bulk of his property in contemplation of marriage, by his deed of said date duly executed and acknowledge, sold, transferred and conveyed to the plaintiffs as joint tenants, to them and the survivor of them, the following described real and personal estate: (*Here describe the property*) upon the following conditions: (*Here state the terms of the trust.*)

(2) That for the accommodation of the said A. B. and at his solicitation, the plaintiffs accepted the said conveyance upon the aforesaid trust, and said deed was duly delivered by said A. B. to the plaintiffs, and admitted to record in the office of the clerk of the ...... court of ......, in the state of ......, in Deed Book No. ......, at page ......, an attested copy of which deed is herewith filed as Exhibit "A" and made a part of this bill.

(3) That on the .... day of ......, 19.., A. B. married C. D., who is now living, and there have been born lawful issue

of said marriage as follows: *(Here set out the names and ages of the children)*.

(4) That the plaintiffs have held and managed the property conveyed by the said deed ever since the delivery of the same, and have duly paid over to the said A. B., the net income arising upon said trust as provided in said deed.

(5) That the plaintiffs have sold part of the property conveyed to them in said deed, and have reinvested the proceeds thereof in other property for the benefit of the said trust, pursuant to the powers given them in said deed.

(6) That there have come into plaintiffs' hands and are now held by the plaintiffs as a part of this said trust property ...... shares of the capital stock of the ...... Company and ...... shares of the capital stock of the ...... Company, which companies are duly incorporated under the laws of the State of ......

(7) That said stocks have thus far proved, and at present continue to be profitable investments, and the plaintiffs have held and now hold the same as such trustees with the knowledge and assent of said A. B. and neither said A. B., nor the plaintiffs know of any other securities which, in their judgment would probably produce a greater net income with greater safety and certainty; but the plaintiffs are in doubt and are unwilling longer to hold so large an amount of said stocks without the advice and protection of a decree of a proper court.

(Set forth a full statement of the proceedings, investments and disbursements of the trustees from the commencement of the trust.)

(8) That ever since accepting said trust the plaintiffs have rendered frequent accounts of their management of said trust and of the receipts and expenditures on account thereof to said A. B., and he has approved the same; but inasmuch as said trust is necessarily of very long duration, and the rights of the said minor children born, or that may be hereafter born, are involved in the administration of said trust, as well as the rights of his wife, the plaintiffs feel it to be their right and duty to ask the court to examine into their administration of said trust from the

commencement thereof, their sales and purchases, investments and reinvestments, as respects the principal of said trust fund, and their receipts, charges and disbursements on account of the income thereof, and to pass upon the propriety and correctness of their said doings, and accounts, and to make a complete settlement to the date of the decree of all matters between the plaintiffs and the parties interested.

(9) That the value of the trust property now in the hands of the plaintiff is about $......, and is situate in the State of ......, and said A. B. has, since the acceptance of said trust by plaintiffs removed out of this State, and now resides with his wife and children in the city of ......

Plaintiff therefore prays that (*here set out names of parties*) may be made parties defendant and required to answer the same; (*here waive oath, pray for process, etc.*) that the court will advise and order whether they may or shall hereafter hold as part of said trust property said stocks in said ...... companies or any part thereof; that the court will examine into the administration of said trust by the plaintiffs from the commencement down to the time of such examination, including all their sales and purchases, investments and reinvestments, as respects the principal of said trust fund, and all other receipts, charges and disbursements on account of the income thereof; and that the court will pass upon the propriety and correctness of the said doings and accounts, and make a complete settlement up to date of the decree of all said matters, as between the plaintiffs and the parties interested in said trust; and grant unto plaintiff such other further and general relief as to equity may seem as in duty bound they will ever pray, etc.

M. L.
O. P.
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

40a. Bill of Interpleader.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. and E. F. } In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your complainant, A. B., respectfully represents:

(1) That he has in his hands the sum of ...... dollars, which came to him in the following manner: (*describe the circumstances*); and that he does not own any part of the said sum of ...... dollars, or claim any interest whatever in the same; and,

(2) That he has been notified by C. D. and E. F. each respectively, that the said C. D. and E. F. each respectively claims the aforesaid sum of ...... dollars; and,

(3) That your complainant has no personal knowledge as to the justice or right of their respective claims, and that there is no way by which the same may be determined to your complainant's protection, save by the intervention of a court of equity;

(4) That the adverse claims of C. D. and E. F. respectively are derived from and are dependent upon a common source, to-wit: (*here insert description of source*).

In consideration whereof, your complainant prays that the said C. D. and E. F. may be made parties defendant to this bill and required to answer the same; that they be compelled to file before this court statements in writing as to their claims respectively, and be permitted to introduce such proper evidence as each of them may desire in support of his pretention. And your complainant further prays that this court will then decide the matter between the said C. D. and E. F., and will say to whom your complainant shall pay the said sum of money and that upon the payment thereof, will decree complete exoneration and protection to your complainant; and that your complainant may have all further and other general relief in the premises as the nature of his case may require, or to equity shall seem meet.

A. B., Complainant.

J. C., Counsel.
State of ......,
...., to-wit:

A. B., the complainant named in the foregoing bill, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true, and that there is no collusion between him and either of the defendants in said bill.

A. B., Complainant.

Taken, sworn to and subscribed before me Y. Z., a notary public of and for the ...... and State aforesaid, in my ...... aforesaid, this .... day of ......, 19..

Y. Z., Notary Public.

Text page 238.

40b. Bill of Interpleader.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. and E. F. } In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

(1) Your orator, A. B., respectfully represents to Your Honor that on the .... day of ......, 19.., your orator purchased of one C. D., one of the defendants hereinafter named, two horses, for which he promised to pay the said C. D. the sum of ...... dollars, and gave the said C. D. his promissory note therefor, payable to the said C. D. ...... after date; that at the time of such purchase the said C. D. represented, and still insists, that he was the owner of said property, and had good right to sell the same to your orator, and to accept the said note therefor.

(2) And your orator further represents that afterwards, on the .... day of ......, 19.., one E. F., a defendant hereinafter named, made known and claimed, and still insists and claims, that he, the said E. F., was at the time of said sale the real owner of said property, and that the said C. D. was not the

owner thereof as he pretended to your orator, but was merely the agent for the said E. F. in making the said sale to your orator; that the said C. D. had no authority to take said note in his own name, and that the said sum of ...... dollars was due and payable to him, the said E. F., and not to the said C. D.; and the said E. F. then and there notified your orator in writing not to pay the amount of said purchase money to the said C. D.

(3) Your orator further represents that the said E. F. has commenced an action at law against your orator, in the ...... court of the ...... of ......, to recover the purchase money due on said property, and that the said C. D. is now threatening to bring suit against your orator, on the said promissory note.

(4) Your orator further represents that he has always been willing to pay the amount of such purchase money to such person or persons as should be lawfully entitled to receive the same, and to whom he could pay the same in safety; and he hereby offers to bring the same into court, as the court shall direct.

(5) And your orator further represents that he does not in any respect collude with either of the said named defendants, touching the matters in controversy in this cause; nor is he in any manner indemnified by the defendants, or either of them; nor has he exhibited this, his bill of interpleader, at the request of the defendants, or either of them, but merely of his own free will and to avoid being molested, vexed and harassed touching the matters contained herein.

Your orator therefore prays that the said C. D. and E. F. may be made parties defendant to this bill, and full and direct answer make to the same; and that the defendants may severally set forth to which of them the said sum of ...... does of right belong, and is payable, and how in particular they make out their claim thereto; and that the defendants may interplead, and settle and adjust their said demands between themselves; your orator being willing and desirous, and agreeing, that the said sum may be paid to such of them to whom the same shall, in the judgment of the court, appear of right to belong; and that your orator may be at liberty to bring and pay the said sum of ...... dollars into this honorable court, which your orator hereby offers to do, for the benefit of such of the defendants who shall appear to be entitled thereto, and subject to the further order of the court; and that the defendant, E. F., may be restrained by the injunction of this court, from proceeding against your orator in the said action at law for the purchase money of said property, and that all the defendants may be restrained from commencing any action or actions against your orator for the recovery of the said sum of ...... dollars, or touching any matters or things aforesaid; and that the said C. D. may be decreed to deliver the said promissory note to your orator to be canceled; and that your orator may have such other and further relief in the premises as equity may require, and to your honor shall seem meet.

A. B.
By Counsel.

Q. M., Counsel.

(*Add affidavit as in No. 40a.*)

Idem. Adapted from Carlin's Hogg's Equity Procedure.

V. Forms in Creditors' Suits.

(See also XXXII, Forms in Proceedings for Judicial Sales.)

41a. Bill in a Creditors' Suit Enforcing Judgment Lien.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D., E. F., G. H.,
I. J. and K. L., Trustee.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

The bill of complaint of A. B., who sues on behalf of himself and all other lien creditors of C. D., against C. D., E. F., G. H., I. J., and K. L., Trustee, filed in the ...... Court of the ...... of ......, ...

(1) The plaintiff complains and says that on the .... day of ......, 19.., he obtained a judgment against the said C. D. in the ...... court of ......, and in the State aforesaid, for the sum of ...... dollars with interest thereon from the date of

said judgment until paid, and ...... dollars costs of the suit in which said judgment was rendered. All which will more fully and at large appear from a certified copy of the said judgment and the taxation of the costs of said suit, herewith filed, marked as exhibits "A" and "B" respectively, and made part of this bill.

(2) This plaintiff further says that, prior, to the rendition of said judgment in favor of this plaintiff, said C. D. executed a deed of trust to the said K. L., Trustee, to secure the payment of a certain debt, evidenced by a promissory note, payable to the said I. J. for ...... dollars, as will more fully and at large appear by the said trust deed, duly of record in the office of the clerk of the ...... court of said ......, in Deed Book No....., at page .... an attested copy of which is herewith filed, marked exhibit "C" and made part of this bill.

(3) This plaintiff further says that the said defendants, E. F. and G. H., on the .... day of ......, 19.., obtained a judgment against the said C. D. for the sum of ...... dollars with interest thereon from the date of judgment until paid, and ...... dollars costs, as will more fully and at large appear by reference to a certified copy of said judgment, together with the taxation of costs, herewith filed, marked, respectively, as exhibits "D" and "E," and made part of this bill.

In W. Va. insert this: (4) This plaintiff further says that on the .... day of ......, 19.., he caused an execution to be issued upon the said judgment obtained by this plaintiff, which was placed in the hands of the sheriff of ...... and subsequently returned by the said sheriff with the endorsement thereon made "No property found out of which the within execution can be made. (Signed) S. J. C., Sheriff of ......," all of which will more fully and at large appear by a certified copy of said execution, together with the return thereon, herewith filed marked exhibit "F" and made part of this bill.

Or where no execution has issued within two years from date of judgment in lieu of this paragraph aver that no execution ever issued upon said judgment within two years next after the date of the rendition thereof.

(5) This plaintiff further says that at the time of the rendition of said judgment the said C. D. was the owner in fee of

two tracts of land situate in the district of ......, in the said county, and sold and conveyed to him, the said C. D. by J. R. and M. P. respectively, by deeds bearing the respective dates of ...... of ......, 19.., and ...... of ......, 19.., which will more fully and at large appear from said deeds themselves, which are duly of record in the offices of the clerk of the ...... Court of said ......, in Deed Books, Nos. .... and a...., at pages .... and ...., respectively, attested copies of which are herewith filed, marked, respectively, as Exhibits "G" and "H" and made part of this bill.

(6) The plaintiff is informed and believes, and so states the fact to be, that the first of the foregoing tracts of land contains about ...... acres, that the latter hereof consist of about ...... acres, and that this is the only real estate, the plaintiff is informed, and believes and so avers, of which the defendant is the owner, or in which he has any interest.

(7) The plaintiff says that he brings this suit on behalf of himself and all other lien creditors of the said C. D., that the various liens against the said real estate may be properly adjudicated and their priorities determined and enforced against the said real estate.

(8) This plaintiff avers that his said judgment remains wholly unpaid, and is a binding and subsisting lien upon all the said real estate; that he is advised, and so avers, that the said other judgment lien, as well as the trust lien, are also unpaid and constitute liens upon the said real estate; and that if there are any other liens thereon this plaintiff is unable to say by whom they are held, but the plaintiff believes and so states that no other liens exist against the said real estate.

(9) This plaintiff also avers that the rents, issues and profits of the said real estate will not, in five years, pay off and discharge the liens existing thereon.

This plaintiff now prays that C. D., E. F., G. H., and I. J., and K. L., Trustee, may be made parties defendant to this bill and required to answer the same (*in Virginia add* but answer under oath is hereby waived); that proper process issue; that this cause may be referred to a commissioner in chancery to take and report the liens and their priorities upon said real estate, the fee simple and annual rental value thereof; that there may be a decree of sale, upon the return and confirmation of said report, of the said real estate, of so much thereof as may be necessary, to pay off and discharge the various liens thereon; and grant unto this plaintiff such other, further and general relief as the court may see fit to grant, and as in duty bound he will ever pray, etc.

A. B., By Counsel.

Q. M., Counsel.

Text page 194; Va. Code, § 6472; Barnes' W. Va. Code, Ch. 139, §

41b. Bill in a Creditors' Suit against the Estate of a Decedent.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
E. F., as Admr. of the Est. of C. D., and others.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator respectfully showeth:

(1) That he brings this suit on behalf of himself and all other creditors of the estate of C. D., deceased.

(2) That on the .... day of ......, 19.., the said C. D. died intestate, and that E. F. was, on the .... day of ......, 19.., duly appointed as administrator, gave bond and qualified, and ever since hath been and is now acting as such administrator.

(3) That the ...... day of ......, 19...., and in the lifetime of the said C. D., your orator obtained a judgment against the said C. D. in the ...... Court of the ...... of ......, for ...... dollars, with interest thereon until paid, and the costs of suit, which amount to ...... dollars, as will more fully and at large appear by reference to said judgment itself and a taxation of said costs, certified copies of which are herewith filed as exhibits marked "A" and "B" respectively, and made part of this bill. Your orator further showeth that there was no part of said judgment paid during the lifetime of the said C. D., and your orator had said judgment revived in the name of the said E. F.

as his personal representative, and execution was issued thereon and returned without any property being found with which to pay the said judgment, as will more fully and at large appear by reference to said execution and return endorsed, copies of which are herewith filed as exhibits marked respectively "C" and "D" and made part of this bill.

(4) That he is informed and believes and so represents that the estate of the said C. D. is largely indebted, and that there is no personal property belonging to said estate out of which to pay the said debts.

(5) Your orator further represents that the said C. D. died seized and possessed of certain real estate situate in the county of ......, in the state of ......, in the district of ......, containing ...... acres, as appears from the title deeds therefor of record in the office of the clerk of the ...... court of said county, in Deed Books Nos. ...., ... and ...., at pages ...., ... and ...., respectively, certified copies of which are filed herewith, as a part hereof, marked "E" "F" and "G" respectively.

(6) That said C. D. left him surviving the defendants, M. D., as his widow, and P. D., F. D. and J. D. as his only children and heirs-at-law, the latter two of whom are infants under twenty-one years of age.

Your orator therefore prays that the said E. F., administrator of the estate of the said C. D., deceased, the said M. D., as his widow, and the said F. D., P. D. and J. D., as his only children and sole heirs-at-law, be made parties defendant to this suit; (*here insert in Va.*: and be required to answer the same, but answers under oath are hereby waived as to all of the defendants save as to such as by law are required to answer under oath; that a competent attorney at law be appointed guardian *ad litem* to represent the interests of the said infants in this proceeding who, as well as such of the infants as are over the age of fourteen years, may be required to answer this bill on oath in proper person; *in W. Va. insert*: and required to answer the same; that a suitable person be appointed guardian *ad litem* for the infant defendants, and the guardian *ad litem* as well as the infant defendants over the age of fourteen years be required to answer the bill in proper person on oath), that the administration accounts of the said E. F. may be stated; that an account of all debts and liabilities of the estate of the said C. D. may be taken and their priorities ascertained and determined; that the amount and value of the real estate owned by the said C. D. at the time of his decease may be also ascertained and determined; that all other accounts and orders which are proper may be taken and made in this cause; and grant unto your orator such other, further and general relief as to equity and good conscience may seem meet, and as in duty bound he will pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

Idem; text page 193; Va. Code, §§ 5395, 5398, 6470-6474; Barnes' W. Va. Code, Ch. 86, §§ 3, 6 and 7; Ch. 139, §§ 5-10.

41c. Bill in a Creditors' Suit by an Executor or Administrator to Subject the Real Estate of the Decedent to the Payment of His Debts.

A. B., as Admr. of the Est.
of C. D., dec'd.
v.
R. D., F. D., S. D., J. R., H. S.,
L. M., and S. T.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That on the .... day of ......, 19.., the said C. D. died intestate, and your orator was on the .... day of ...... 19.., duly appointed administrator of his estate, gave bond and qualified, and ever since hath been and is now acting as such administrator.

(2) That the said C. D. at the time of his death owed a large number of debts, some of which were evidenced by judgments, and others by notes and open accounts, and that said judgments, notes and open accounts remain entirely unpaid, and the personal estate of said decedent is insufficient to pay the same.

(3) That there came into the hands of your orator personal property to be administered, which was duly appraised, of the

value of ...... dollars, as will more fully and at large appear by this plaintiff's inventory thereof, and its appraisement, copies of which are herewith filed marked respectively as Exhibits "A" and "B" and made part of this bill.

(4) That the said decedent left very considerable real estate, a part of which is situated in the county of ......, and the residue thereof in the ...... of ......, in the said state, as will more fully and at large appear from the decedent's title deeds therefor, duly recorded in the clerk's office of the ...... court of the ...... of ......, at pages .... and ...., respectively, and in the clerk's office of the ...... Court of the ...... of ......, in Deed Books Nos. .... and .... at pages .... and ...., respectively, attested copies of which are herewith filed marked, respectively, as exhibits "D" and "E" and made part of this bill.

(5) Your orator further says that the said decedent left the said R. D., as his widow, and the said F. D. and S. D. as his only children and heirs-at-law.

(6) That the said J. R., H. S., L. M. and S. T. are the only known creditors of the said decedent.

Your orator therefore prays that R. D., F. D., S. D., J. R., H. S., L. M., and S. T. may be made parties defendant to this bill and be required to answer the same (*Here follow Form 41b*); that proper process issue; that your orator's accounts as administrator may be settled before a commissioner in chancery of this court; that an account of all debts and liabilities of said C. D. may be taken and their priorities ascertained and determined that the amount and value of the real estate may be ascertained; that the personal estate, so far as it will do so, may be applied to the payment of the debts and liabilities of the said decedent; that all other accounts and orders which are proper may be taken and made in this cause, and grant unto your orator such other, further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

41d. Bill to Foreclose Mortgage or Deed of Trust.

In the ...... Court of the ...... of ......, ...:

X. Y. National Bank
v. } In Chancery. Bill.
A. B., et als.

To the Hon. ......, Judge of the said Court:

Your complainant, the X. Y. National Bank of ...... a corporation organized and existing under the laws of the United States, respectfully shows unto your honor the following facts:

(1) That on the .... day of ......, 19.., one A. B. and C. D., his wife, being indebted to your complainant in the sum of $......, made and delivered to your complainant their certain promissory note of that date, and they thereby promised to pay to your complainant said sum with interest thereon at the rate of .... per cent. per annum, payable to the order of the said Bank in ...... semi-annual payments of $...... each, and a final payment of $......; said payments beginning six months from the date thereof, as will more fully and at large appear from the said note, now ready to be produced in Court, and from a copy of the same, herewith filed, marked exhibit "A" which is prayed to be taken and read as a part of this bill;

(2) Your complainant further represents that to secure the payment of the said sum and interest, above mentioned, the said A. B., and the said C. B., his wife, on the said .... day of ......, 19 .., by their deed of that date, conveyed unto your complainant, in fee simple, the following described tract or parcel of land with its appurtenances, to-wit: (*here insert description of property*), which said conveyance, however, is subject to a condition of defeasance upon the payment of the principal sum and interest aforesaid, according to the tenor and effect of said promissory note, which said deed was, on the .... day of ......, 19.., duly executed, and afterwards, to-wit, on the .... day of ......, 19.., duly admitted to record in the Clerk's Office of the ...... Court of the ...... of ......, in Deed Book No. ......, at page .... A duly certified copy of the same is herewith filed, marked exhibit "B" which is prayed to be taken

and read as a part of this bill. (*Add any other covenants which the mortgagor has violated*).

(3) Your complainant further represents that the said A. B. and C. B. have not paid the semi-annual payment of $......, due on ......, 19.., nor have they paid the semi-annual payment due on ......, 19.., or any part of either of said payments, although frequent demands have been made upon them for such payments, and that the amount now due to your complainant by reason of the default aforesaid is the principal sum of $......, with interest thereon from ......, 19.., at the rate of six per cent. per annum. (*Add any violations of other covenants.*)

(4) Your complainant further represents that it is specifically provided in said mortgage that if any of the payments in the above described note be not paid when due, or should said A. B. and C. B., his wife, make any default in any of the conditions or covenants in said mortgage, then the whole of the debt secured in said mortgage should at the option of your said complainant, become immediately due and demandable, with the further provision that said complainant at any time after such default could institute proceedings for a foreclosure of said mortgage, and to have a sale of the property mortgaged, or so much as might be necessary to satisfy and pay said debt, interest, and all costs incurred in making said sale, including an attorney's fee of $....., and a commission of not exceeding five per cent. on the gross amount of such sale, and to have granted and conveyed the said property to the purchaser or purchasers thereof, all of which will more fully and at large appear by reference to said duly certified copy of said mortgage, herewith filed, marked exhibit "B."

(5) Your complainant further represents that since default has been made, as aforesaid, by the said A. B. and C. B., his wife, it has exercised its option aforesaid, and has demanded the payment of the whole of its debt, principal and interest, and it now demands the payment of the same, as well as all costs as may be incurred in these proceedings.

(6) Your complainant further represents that by reason of

the default aforesaid made by the said A. B. and C. B. in the payment of said sum shown to be due by them, the said mortgaged property has become forfeited, and your complainant is advised that it has the right to apply to a court of equity to have said property sold under a proper decree of the court, and out of the proceeds of said sale to have its debt, interest, and all costs incurred, paid in full.

(7) (*If there are any other liens on the property set them forth in full; if there are no other liens say,* except the lien created by the mortgage aforesaid there are no other liens upon the property.)

In tender consideration whereof, and forasmuch as your complainant is without remedy save in a court of equity where such matters are properly cognizable and relievable, it prays that the said A. B. and C. B. may, by proper process, be made parties defendant to this bill and required to answer the same, (*add if desired,* though answer under oath from them and each of them is hereby expressly waived); that the said defendants, A. B. and C. B. may be directed to pay to your complainant the said sum of $......, together with the interest due thereon and the costs of these proceedings;

(*If there are other liens of undetermined amounts pray for a reference to a commissioner as follows*:

a. That this cause be referred to one of the master commissioners in chancery of this court, who shall by publication once a week for four successive weeks, and which may be treated as personal service, convene all the creditors of the said defendants, A. B. and C. B., at such time and place as the said master commissioner in chancery shall appoint;

b. That the said master commissioner shall take an account of the debts of the said A. B. and C. B., the amounts and order of priority, and shall speedily report the same to the court;

c. That the court ascertain and decree the debts so secured; their amounts and order of priority); that said mortgaged premises may be sold as the court may direct to satisfy the costs of the suit and debts ascertained in their order of priority; that all proper accounts may be ordered and taken; and that complainant may be granted all such other and further relief, both general and special, as the nature of its case may require, and as to equity and good conscience may seem meet and just.

And as in duty bound it will ever pray, etc.

X. Y. National Bank of......,
By................Counsel.

Q. M., Counsel.

(*This form may be used for a deed of trust by making the appropriate substitutions.*)

42a. Affidavit for Proof of Debt before a Commissioner.

State of ......,
...... of ......, to-wit:

This day personally appeared before the undersigned authority A. B. (*or* S. T.) who, being by me first duly sworn, on his oath says that C. D., defendant in the chancery cause of A. B. v. C. D. and others, pending in the ...... Court of the ...... of ......, is justly indebted to the said A. B. in the sum of ...... dollars, money due on contract, for goods, wares and merchandise sold and delivered by the said A. B. to the said C. D. at the instance and request of the said C. D. (*or state any other liability as the case may be, showing a debt on an express or implied contract*), as more particularly appears from the itemized account hereto attached, which account affiant says is true and correct in each and every particular, and for which various items therein stated the said C. D. promises to pay to the said A. B. the divers sums in the said account itemized; that the said sum of ...... dollars has not been paid, nor has any part thereof been paid, by the said C. D. nor by any person or persons for him, to the said A. B., nor to any person or persons for the said A. B., but that the whole of the said sum of ...... dollars is now justly due and owing to the said A. B. and is subject to no credits nor offsets.

(*If the debt or demand be against a deceased debtor or his estate, in which event the affidavit must be made by a person who* *is not interested in the adjudication of the claim e. g. by S. T. add the following paragraph*):

Affiant further says that (*here concisely state the facts showing that affiant has competent knowledge of the facts which he has already sworn to*); that the said A. B. does not and did not derive any interest or title in or to the said debt and claim by assignment or otherwise, either directly or remotely, from, through or under said affiant; and that the said affiant does not have nor claim any interest or title whatever in or to the said debt or claim, by assignment or otherwise, either directly or remotely, from, through or under the said A. B. or any other person.

A. B.
(*or* S. T.)

Subscribed and sworn to before me this .... day of ......, 19..

....
(*Official Character.*)

42b. Counter-Affidavit Denying Debt before a Commissioner.

State of ......,
...... of ......, to-wit:

This day personally appeared before the undersigned authority C. D. who, being by me first duly sworn, on his oath says: that he is a defendant in the chancery cause of A. B. v. C. D. and others, pending in the ...... Court of the ...... of ......; that the said A. B. (*or* that H. S.) has filed before R. M. a commissioner in chancery before whom said cause is now pending a statement of account and affidavit whereby he asserts against affiant a certain claim and debt for the sum of ...... dollars; that affiant denies the correctness of said account and affidavit and each and every part thereof; that each and every statement made in said affidavit is incorrect and untrue; that the said sum stated in said account and in said affidavit is not due and owing, nor is any part thereof due and owing, in any manner from affiant to the said A. B. as he states in his said statement of account and affidavit.

C. D.

Subscribed and sworn to before me this .... day of ......, 19..

....

(*Official Character.*)

Adapted from Carlin's Hogg's Equity Procedure.

43. Order of Reference.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D., et als. } In Chancery. Order of Reference.

This cause came on this .... day of ......, 19.. to be heard upon the bill of complaint and exhibits filed therewith; upon the answers of ......, ..., and ......; on the bill taken for confessed as to the defendants, ..., and ......, upon whom process appears to have been duly served and they failing to appear and answer or otherwise respond to said process; on the bill set for hearing as to the non-resident defendants, ..., and ......, against whom the plaintiff appears to have proceeded by order of publication as required by law, and they still failing to note their appearance herein; and was argued by counsel.

On consideration whereof the court does adjudge, order and decree that this cause be and the same is hereby referred to one of the master commissioners in chancery of this court, with direction to take, state and settle an account showing:

(1) The personal estate owned by the defendant, C. D., and subject to the claims of his creditors.

(2) The real estate owned by the defendant, C. D., and subject to the claim of his creditors, its fee simple and annual rental value.

(3) The taxes on the personal and real estate.

(4) What claims asserted, or to be asserted, in this cause, constitute liens on the personal and real estate of C. D., their several amounts and respective priorities.

(5) All other valid claims against said C. D. not reduced to judgment, or otherwise charged as liens against the estate, real and personal, of the said C. D.

(6) If the rents and profits from the real estate of the defendant will in five years pay the lien debts thereon.

(7) Any other matters deemed pertinent to this cause or required to be stated by any party in interest.

And the said master commissioner shall give notice of the time and place for the execution of this order by a publication thereof once a week for four successive weeks in the ...... which publication shall be equivalent to personal notice to all parties in interest.

And said master commissioner will report to a future term of this court how he has executed this decree.

Idem; Text page 198.

44. Notice to Creditors in a Suit to Subject the Real Estate of a Decedent to the Payment of His Debts.

NOTICE TO CREDITORS.

To the creditors of A. B., deceased:

In pursuance of a decree of the ...... Court of the ...... of ......, made in a cause pending, to subject the real estate of the said A. B., to the payment of his debts, you are required to present your claims against the estate of the said A. B. for adjudication to C. D., commissioner, at his office in the said county, on or before the .... day of ......

Witness E. F., Clerk of the said Court, this .... day of ......, 19..

E. F., Clerk.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

VI. Forms in Divorce and Annulment Proceedings.

45. Petition for Alimony without Divorce.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Petition.
B. B.

To the Hon. ...... Judge of the said Court:

Your petitioner, A. B., respectively, sheweth unto the court:

(1) That she was married to the defendant on or about the .... day of ......, 19..; that the issue of said marriage is one child, born on the .... day of ......, 19..

(2) That on or about the .... day of ......, 19.., the defendant sent plaintiff away from him and has ever since refused to permit her to return (*or,* to return to her, *as the case may be*) contributing to her support and maintenance separately and apart from himself (*or,* contributing nothing to her support);

(3) That in the month of ......, 19.., said defendant ceased further to provide for the support of the said plaintiff and child; that at no time since has defendant contributed or offered to contribute in any way to the support and maintenance of said plaintiff.

(4) That she is entirely without means to support herself and child during the pendency of this suit; that she is without means to carry on the same; that her child, a daughter, now .... years of age, is wholly dependent upon plaintiff for support, maintenance, care and education;

(5) Plaintiff further says that the defendant is a man of means, earns at least the sum of ...... dollars per month, and possesses money and property of great value. (*Here describe the property possessed by the defendant.*)

Plaintiff therefore prays that the said defendant may be required to pay her, this plaintiff, a reasonable sum for her maintenance and support during the pendency of this suit, and such further sums as will enable her to carry on the same, and that on the final hearing of this cause she may be decreed a reasonable alimony and maintenance out of the property and income of the said defendant and the costs of this suit; and that she may have such other and further relief as to equity may seem meet and as in duty bound she will ever pray, etc.

A. B., by Counsel.

Q. M., Counsel.

Text page 232; Barnes' W. Va. Code, Ch. 64, § 11.

46a. General Form for Bill of Divorce.

In the ...... Court of the ...... of ......, ...:

A. D.
v.
C. D.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your complainant, A. D., respectfully represents:

(1) That on the .... day of ......, 19.., your complainant, whose maiden name was A. B., was lawfully married at ...... in the ...... of ......, ..., to C. D., as will appear from a certificate of marriage herewith filed, marked "Exhibit A" and made a part of this bill; and,

(2) That continuously from the date of said marriage until the .... day of ......, 19.., your complainant and the said C. D. lived together as husband and wife at ......; and,

(3) That your complainant has resided in and has been domiciled in this state ever since the aforesaid marriage, and is domiciled in, and is and has been an actual bona fide resident of this state for at least one year preceding the commencement of this suit. (*For West Virginia say*: That your complainant is an actual bona fide citizen of this state and of the United States of America, and had resided in this state for at least one year immediately preceding the beginning of this suit.)

(4) (*Here insert facts constituting grounds for relief prayed See 46 b. c., etc., following.*)

(5) That the following children were born to your complain-

ant and defendant (*name them and their ages*) and are now in the possession of ......; and,

(6) That your complainant last cohabited with the said C. D. at ...... in the ...... of ......

In consideration whereof, and forasmuch as your oratrix is remediless save in a court of equity, she prays that the said C. D., may be made a defendant to this bill; and be required to answer the same, but not on oath, the same being hereby waived: that proper process may issue; that the defendant be restrained and enjoined from interfering with or in any way molesting your oratrix and her children who are with her; that a divorce from the bonds of matrimony (*or,* bed and board) may be decreed her; that he may be compelled to deliver up her two eldest children to her, and forever restrained and enjoined from molesting them, or exercising any control over them; that he at once, and pending this suit, be compelled to pay such sums of money, as temporary alimony, as may be sufficient for the support of your oratrix and her children, and such other sums of money as may be required to pay the costs of this suit and the fees of counsel proper to be paid to carry on this suit; that he may be compelled to make such permanent provision for the support of your oratrix and her children as may be just and right, and to secure the regular, prompt and safe payment of the same in such way as may to the court appear to be effectual; that an injunction be awarded to restrain and enjoin the said C. D. from converting, assigning, or in any way disposing of any of his property whatsoever until further order from this court; that the court may not require that any notice whatever be given to the said C. D. or anyone else, before the said injunction is awarded; and that your complainant may have all such further, and other, and general relief in the premises as the nature of her case may require, or to equity shall seem meet.

A. D., Complainant.

Q. M., Counsel.

(*In West Virginia append the following affidavit*):

State of West Virginia:

County of ......, to-wit:

A. D., the plaintiff named in the foregoing bill, being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

A. D.

Taken, sworn to and subscribed before me ...... a Notary Public of and for the ...... and State aforesaid, in my ...... aforesaid, this .... day of ......, 19..

....

Notary public *or other official.*

(*If taken before a notary, append date of expiration of notary's commission.*)

Text page 213; Va. Code, §§ 5100-5116; Barnes' W. Va. Code, Ch. 64.

46b. Formal Allegation for a Divorce from the Bond of Matrimony Where the Wife Had Been Notoriously a Prostitute before Marriage.

This complainant further says that prior to his said marriage to the said defendant, she, the said defendant, without the knowledge of this complainant, was notoriously a prostitute, and,

This complainant further says that upon learning the said fact this complainant ceased to live with said defendant, and they have not since cohabited; and,

Idem; text page 216; adapted from Carlin's Hogg's Equity Procedure.

46c. Formal Allegation for a Divorce from the Bond of Matrimony Because at the Time of Marriage the Wife Was with Child.

That at the time of said marriage the said C. D. was (*in Va.*: with child; *in West Va.*: enceinte) by some person other than your complainant, which person is to your complainant unknown; and,

That the fact that the said C. D. was with child as aforesaid was without the knowledge of your complainant, who knew nothing whatever of the said fact at the time of his marriage to the said C. D. or at any time theretofore, or at any other time before the .... day of ......, 19.. ; and,

That on the said ...... day of ......, 19...., your complainant learned for the first time of said fact; and that he has not cohabited with the said C. D. since obtaining knowledge of the said fact that the said C. D. was with child (*or* enceinte *as aforesaid*) ; and,

Idem; text page 216.

46d. (W. Va.) Formal Allegation for a Divorce from the Bond of Matrimony Because Husband Prior to Marriage Had Been Notoriously a Licentious Person.

That prior to the aforesaid marriage the said C. D. had been notoriously a licentious person; that is to say, for three years before said marriage the said C. D. habitually frequented a certain bawdy house in the ...... of......, known as No..... ...... street, and other bawdy houses in the said ...... of ...... ; that he was used and accustomed to enter the said houses and particularly the aforesaid one known as No. .... street both in day and in the night time; that he usually spent two or three nights of each week in said house known as No. .... ; that whenever he visited said house known as No .... and other such houses, he did habitually and openly take with him to one of the rooms of said house a prostitute residing therein, and have carnal illicit intercourse with her; and that he was so open and indifferent about his said actions that they became and were commonly, generally and notoriously known throughout the said ...... of ...... ; and,

That said actions and the fact that the said C. D. was notoriously a licentious person were without the knowledge of your complainant, who knew nothing whatever of said actions and fact at the time of her marriage to the said C. D., or at any time theretofore, or at any other time before the .... day of ......, 19.. ; and,

That on the said ...... day of ......, 19...., your complainant heard for the first time of said actions and fact; that she had not cohabited with the said C. D. since obtaining knowledge of the said fact that he had been notoriously a licentious person; and that upon obtaining said knowledge she returned to her father's home and has since that time lived with her father, W. B., at ......; and,

That her son, Robert, is now with her at her father's home; that her daughter, Fannie, is restrained by the said C. D., and is now at the home of the said C. D.; and that the said Fannie is, for a greater part of each day, left alone without a companion, or any protection, or anyone to care for her; and,

That both your complainant and the said C. D. have resided, and have been domiciled in this State ever since the aforesaid marriage, and for more than one year next preceding the commencement of this suit, and are domiciled and now reside in this State; and,

That your complainant last cohabited with the said C. D. at ...... in the county of ......; (*or,* that the said C. D. resides at ...... in the county of ......) and,

That your complainant is without any means whatsoever of support, or with which to prosecute this suit; that the said C. D. has not given her any money at all since the said ...... day of ......, 19.., or furnished her with necessaries of any description; that she is now living upon the charity of her father; that her husband, the said C. D., owns at least ...... dollars' worth of real and personal property; and that the annual income from said property amounts to about ...... dollars; and,

That the said C. D. is leading an immoral and improper life; that from time to time he entertains at his own home women, with whom he there has carnal, illicit intercourse; and that he is not a proper person to have the custody, care and education of the aforesaid children, or either of them; and,

That your complainant believes and charges that the said C. D. will, upon learning of the institution of this suit, immediately convert, assign and dispose of his property to prevent your complainant from obtaining alimony, unless restrained from so doing; and,

Idem; text page 216.

46e. Formal Allegation for a Divorce on the Ground of Impotency.

That immediately after the said marriage took place your orator discovered that the said C. D. at the time of her intermarriage with your orator as aforesaid was, and has continued to be naturally impotent, and physically incapable of entering into the marriage state; that, (*here state the particular character of the impotency*) so that the marriage could not be consummated by the sexual intercourse of the parties.

And the plaintiff further says that as he is informed and believes, and so charges the fact to be, that the said impotency and physical incapacity of the said C. D. still exists and is incurable.

Idem; text page 216; adapted from Carlin's Hogg's Equity Procedure.

46f. Formal Allegation for a Divorce from the Bond of Matrimony Because of Adultery.

That the said C. D., has, since the aforesaid marriage, committed adultery; that is to say, on the ...... day of ......, 19.., about ...... o'clock ...... M. the said C. D. entered a certain bawdy house in the ...... of ......, known as No..... ...... street; that the said C. D. then and there take one M. J. into one of the upstairs rooms of said house, and did then and there have carnal, illicit intercourse with the said M. J.; and,

That on the .... day of ......, 19...., your complainant heard for the first time of the committing of said adultery by her said husband; that she has not cohabited with him since obtaining the knowledge of the fact of said adultery; and that upon obtaining said knowledge she returned to her father's home and has since that time lived with her father, W. B., at ......; and,

That at the time of the institution of this suit it had not been five years (*in West Va.* three years) since the adultery occurred, and that it was not committed by the procurement or connivance of your complainant; and,

That the said C. D. is leading an immoral and improper life; that from time to time he entertains at his own home women, with whom he there has carnal, illicit intercourse; and that he is not a proper person to have the custody, care and education of the aforesaid children or either of them; and,

Idem; text page 219.

46g. Formal Allegation for a Divorce from the Bond of Matrimony Because of Prostitution by Wife.

That prior to the aforesaid marriage the said C. D. had been notoriously a prostitute; that is to say, for the period of about ...... months, in the year 19.., the said C. D. lived at a certain bawdy house in the ...... of ...... known as No. .... Street, and during that time did indiscriminately consort with and have carnal, illicit intercourse with divers men for hire and reward, the names of which said men are unknown to your complainant; and,

That the fact that the said C. D. had been a prostitute as aforesaid was without the knowledge of your complainant, who knew nothing whatever of said fact at the time of his marriage to the said C. D., or at any time theretofore, or at any other time before the .... day of ...., 19..; and,

That on the said ...... day of ......, 19...., your complainant learned for the first time of the said fact, and that he has not cohabited with the said C. D. since obtaining knowledge of the said fact that the said C. D. had been a prostitute as aforesaid; and,

Idem.

46h. Formal Allegation for a Divorce from the Bond of Matrimony Because of Sentence to Confinement in the Penitentiary.

That subsequent to aforesaid marriage, to-wit, on the ...... day of ......, 19...., in the court of ...... (*or,* in the ......court of ...... of the state of ......, *or* in the District Court of the United States for the ...... district of ......) the said C. D. was sentenced to confinement in the penitentiary of this state (*or,* of the state of ......, *or* of the United States) as will appear from the certified copies or orders from the order book of said court, herewith filed, marked "Exhibit B" and made a part of this bill; and,

That cohabitation between your complainant and the aforesaid C. D. has not been resumed after such confinement; and,

Idem; text page 220.

46i. Formal Allegation for a Divorce from the Bond of Matrimony Because of Conviction of an Infamous Offense.

That prior to the aforesaid marriage, the said C. D. had been convicted of an infamous offense; that is to say, on the .... day of ......, 19.., in the ...... Court of the ...... of ......, ... the said C. D. was convicted of (*here state the offense*) as will appear from the certified copies of orders from the Order Book of said court, herewith filed, marked "Exhibit B" and made a part of this bill; and,

That said conviction was without the knowledge of your complainant, who knew nothing whatever of said conviction at the time of the said conviction, or at the time of her marriage to the said C. D., or at any other time before the .... day of......, 19..; and,

That on the said ...... day of ......, 19...., your complainant heard for the first time of said conviction; that she has not cohabited with the said C. D. since obtaining knowledge of the said conviction, and that upon obtaining said knowledge she returned to her father's home, and has since that date lived with her father, W. B., at ......; and,

Idem.

46j. (Va.) Formal Allegation for a Divorce from the Bond of Matrimony Where Party Is a Fugitive from Justice.

That on or about the ...... day of ......, 19...., the said C. D. was charged with an offense, punishable with death (*or,* confinement in the penitentiary), namely, the crime of (*here state* *the crime*); that upon said charge the said C. D. was, on the .... day of ......, 19.., indicted as will appear from a certified copy of the indictment herewith filed, marked "Exhibit B" and made a part of this bill; that on the .... day of ......, 19.., the said C. D. left this State, and has been absent for more than two years prior to the commencement of this suit; and that the said C. D. is now a fugitive from justice and his whereabouts are totally unknown to your complainant; and,

idem.

46k. Formal Allegation for the Annulment of Marriage on the Ground That the Defendant Had a Former Wife Living at the Time of the Second Marriage.

That the complainant further says that, after her marriage with the defendant, she continued to live with him until the ...... day of ......, 19...., when this complainant for the first time ascertained that the defendant had a former wife living at the time of his marriage to this complainant; and,

And now complainant charges and avers that the said defendant was, on the .... day of ......, 19.., lawfully married to ......, in the ...... of ......, and state of ......, as will more fully appear from a duly certified copy of the record of said marriage, herewith filed as part hereof, marked "Exhibit B" and that the said ...... wife of the said defendant, was living and was then still the lawful and legal wife of said defendant when this plaintiff and defendant were married to each other as aforesaid.

Plaintiff now prays that the said marriage celebrated between this plaintiff and the defendant be annulled, declared void and held for naught, etc.

Va. Code, § 5100; Barnes' W. Va. Code, Ch. 64, § 4. Adapted from Carlin's Hogg's Equity Procedure.

46l. Formal Allegation for Annulment of Marriage on the Ground of Duress.

That at the time of complainant's said marriage, defendant was pregnant with a child which, for the purpose of inducing complainant to marry her, she falsely and fraudulently represented to be the child of complainant, but complainant was not in fact the father of said child, and consented to such marriage only when threatened by R. R., the father of said defendant, with instant death unless he, the said complainant, should consent to such marriage, he, the said R. R., holding a loaded pistol pointed at said complainant at the time complainant gave his consent to marry the said defendant; and,

That immediately after said marriage plaintiff returned to his father's home, and he has never since cohabited with said defendant, nor had any communication or intercourse with her.

Idem.

46m. Formal Allegations for a Divorce from Bonds of Matrimony Because of Desertion.

That the said C. D. has wilfully deserted and abandoned your complainant for a period of more than three years; that is to say, on the .... day of ......, 19.., the said C. D. did voluntarily, wilfully and without any justification whatever, leave his home on a northbound B. & O. train; that immediately before leaving he stated to your complainant that he was going to leave her forever and that he would never return to her; and that your complainant has never heard from him since that day, nor does she now know where he is or whether he be dead or alive; and,

Idem; text page 221.

46n. Formal Allegation for a Divorce from Bed and Board for Cruelty (By Wife).

That during all that time since their marriage she has been unto her said husband a faithful and devoted wife, and has born unto him four children, to-wit: Fannie, now thirteen years of age; Robert, twelve years old; Elizabeth, eight years old, and Thomas, two years old. Your oratrix does not pretend that during her married life she has been wholly faultless, or that she is free from the common infirmities of human nature, but she does aver and charge that she has never given to her husband provocation to bad treatment, or that except when driven to desperation by his cruel and relentless conduct, she has been other than a loving, obedient and gentle wife.

She does not pretend that her love for him, which was once so strong, has survived the coarse abuse, the cold neglect, the public mortification, the want and suffering which her husband has inflicted upon her, and subjected her and her young children to.

Your oratrix does aver on the other hand that for years her said husband has been intemperate in his habits, abusive and violent to her, even to blows, that he has failed to provide for her wants, and those of her children, that he has withheld the means to purchase food, raiment, and even fuel, in quantities and of a quality sufficient to provide your oratrix and her children in such condition as from his means and their position in life, your oratrix had reason to expect and right to demand.

Your oratrix further avers that by reason of her husband's brutal treatment she is and has been in greater danger of her health and even of her life; that time and again she has been compelled to flee from her house and to seek shelter and protection from him.

She further avers and charges that her two youngest children are with her now at her father's house; that the two oldest are restrained at her husband's house, where, especially Fannie, a female child of tender years, it without companion other than her brother Robert, and where both are subjected to the dangerous associations of their father's low companions; where they do not receive the care and attention necessary for them; and where they daily and hourly hear the grossest and most obscene language, and witness the humiliating sight of their father's habitual drunkenness.

The said C. D. not content with thus restraining these young children from the company and association of their mother, makes constant threats that he will also take from her the two younger children now under her control. As for your oratrix, he sometimes orders her to return, and again submit herself to his will, and risk her health and life to his abuses; and at other times informs her that she shall never again darken his doors.

As it is, whether she goes or stays, your oratrix's life can but be one of misery. She owes it, however, to her children, as well as to herself, that she should seek the court's protection, and should through it obtain the means of support from her husband, the proper custody of children, and exemption from his threats and the fear of his control.

Your oratrix avers that she is without the means of support, and is now upon the charity of friends; that her husband, the said C. D., is a man of means, owning considerable real and personal property, to-wit: (*here describe the real and personal property*) and other real and personal property, the exact location and description whereof your oratrix does not know.

Your oratrix is also informed, believes, and so charges, that the annual income of the said C. D. from his property, amounts to about the sum of $......

Idem; text page 220.

460. Formal Allegation for a Divorce from Bed and Board for Cruel Treatment (By Husband).

That on the ...... day of ......, 19...., complainant was compelled to leave and cease living with defendant in consequence of the ill-treatment hereinafter mentioned; that during the time he so lived with the said defendant he always conducted himself toward her with kindness, and as a true and indulgent husband, supplying all her wants, and necessities, according to the best of his means and ability, and suitable to his and her condition in life; and,

Your orator further represents that the said C. D., not regarding her marriage relations and duties, has, since the said intermarriage, been guilty of extreme and repeated cruelty toward your orator, in this, that she is a woman of great austerity of temper, and very frequently during the past ...... years, indulged in violent sallies of passion, and used toward your orator very obscene and abusive language without any provocation whatever, and frequently refused to prepare your orator's meals, and perform such other household duties as it was incumbent upon her to perform; and, on numerous occasions during the time mentioned, has used personal violence toward your orator, which he did feel disposed to resent, further than to defend himself, on account of her sex; and particularly your orator charges, that on or about, (*here insert the approximate dates of the attacks*) the said C. D. without any provocation whatever, struck your orator a violent blow over the head with a club; and again, on or about (*here insert the approximate dates of the attacks*) the said C. D. again attacked your orator in their house and severally beat and bruised him with a chair, and broke the chair in pieces; and that on or about (*set forth each act of violence according to the facts*); so that your orator is in bodily fear of his life.

Idem.

46p. Formal Allegation for a Divorce from Bed and Board Because of Reasonable Apprehension of Bodily Hurt.

Complainant further complains and says that on the ...... day of ......, 19.., in the ...... of ......, and state of .....,
the said defendant used to, of and concerning this complainant vile and abusive epithets, and then and there without any just or reasonable cause cursed complainant and accused her of being an unchaste woman and also did threaten the life of the said complainant; and this complainant was compelled to and did flee from her home to save herself from severe injury and bodily harm; and the defendant threatened to take the complainant's life if she again returned to live with him.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

46q. (W. Va.) Formal Allegation for a Divorce from Bed and Board Because of Habitual Drunkenness.

Complainant further complaining, says that for a long time last passed, and prior to the bringing of this suit, the said defendant has been guilty of habitual drunkenness, and is now guilty of the same.

Idem.

46r. Formal Allegations for a Divorce from Bed and Board Because of Desertion.

That the said C. D. has wilfully deserted and abandoned your complainant on the .... day of ......, 19.., voluntarily and without any justification whatsoever, leaving his home on a southbound B. & O. train; that immediately before leaving he stated to your complainant that he was going to leave her forever and that he would never return to her; and that your complainant has never heard from him since that day, nor does she know where he is or whether he be dead or alive; and,

Idem; text page 221.

47a. Answer to a Bill for Divorce Setting up Condonation.

In the ...... Court of the ...... of ......, ...:

A. D.
v. } In Chancery. Answer.
C. D.

The answer of C. D. to a bill of complaint filed against him in the ...... Court to the ...... of ......, ..., by A. D., complainant.

This defendant reserving to himself the benefit of all just exceptions to the said bill of complaint, for answer thereto, or to so much thereof as he is advised that it is material he should answer, answers and says:

(1) That he, the defendant, admits the marriage alleged in said bill;

(2) That the defendant for further answer unto said bill says, that after the times mentioned in said bill, and before the commencement of this suit, the plaintiff being informed as to the matters therein alleged, freely condoned said alleged adultery, and forgave the defendant therefor, and freely cohabited with him, and that ever since such condonation the defendant has been a faithful husband to the plaintiff, and has constantly treated her with conjugal kindness.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

C. D., Respondent.

A. M., Counsel.

In West Virginia, add the following affidavit:

State of West Virginia:

County of ......, to-wit:

C. D., the defendant named in the foregoing answer being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

C. D., Defendant.

Taken, sworn and subscribed to before me, Y. Z., a notary public of and for the ...... aforesaid, in my ...... aforesaid, this .... day of ......, 19..

Y. Z., Notary Public.

Text page 224 and 227; Va. Code, § 5103; Barnes' W. Va. Code, Ch. 64, § 5.

47b. Answer to a Bill Setting up Recrimination.

Insert usual commencement as in Form 47a, then add:

That he, this defendant, admits that the plaintiff is a resident of ......, and has resided in the State of ......, for the period of one year immediately preceding the institution of her suit, and that plaintiff and defendant were married as alleged in said bill; and

Defendant further alleges that on or about the first day of ......, 19.., the plaintiff (*here state a cause for divorce, and as in a bill brought for the purpose*).

Defendant says further that after such offense was committed defendant separated from plaintiff, and since said time has not cohabited with plaintiff or forgiven her offense.

Conclude in the usual manner. See Form 47a. Append affidavit in West Virginia.

Idem; text page 225.

47c. (W. Va.) Answer to a Bill for Divorce Setting up a Claim to Affirmative Relief.

Insert usual commencement as in Form 47a, then add:

(1) That he, the said defendant, admits that plaintiff is a resident of the ...... of ......, and that she has resided in the state of ...... for the period of ...... years immediately preceding the institution of her suit; and,

(2) That he for further answer to said bill says that he admits that the plaintiff and defendant were married, as set forth in said bill; and,

(3) And now this defendant for further answer unto said bill, and by way of a claim for affirmative relief, says that the defendant avers that he is a resident of ...... and has resided in the state of ...... for the period of ...... years immediately preceding the institution of this suit; and,

(4) And defendant, further answering, says that (*here allege cause for divorce as in a bill of complaint.*)

This defendant now prays that the said A. D. may be made a defendant to this answer setting a claim to affirmative relief, and that she be required to answer the same; that he may have a divorce from the said A. D. (*Here pray for the character of divorce, made out by the allegations of the answer claiming affirmative relief*); that the plaintiff's bill may be dismissed as to this defendant; and that defendant may have such other relief as the nature of his case, as set forth in his answer, wherein he claims affirmative relief, may require, and as to equity may seem meet, and as in duty bound he will ever pray, etc.

C. D.
By Counsel.

A. M., Counsel.

(*Append affidavit as in Form No. 47a.*)

Text page 227; Barnes' W. Va. Code, Ch. 125, § 35. For cross-bill in a divorce proceeding, see Form No. 43.

48a. Order Made in Vacation Directing the Payment of Alimony, Pendente Lite, and Awarding an Injunction Restraining the Husband from Incumbering or Disposing of His Property.

An entry made in the ...... Clerk's Office of ...... of ......, ..., in vacation, on Monday, the .... day of ......, 19..

A. D.
v.
C. D.
} In Chancery. Order.

Pending in the ...... court of the ...... of ......, ...:

This day A. D. by her counsel presented her bill in this cause, duly verified by her own affidavit and moved the undersigned, judge of the ...... court of the said ...... and state, in the vacation of the said court, to require the defendant in the above entitled cause to pay to the said A. D. a reasonable sum of money for her support and maintenance, during the pendency of said suit, and to enable her to carry on and prosecute the same. And [it appearing that the said C. D. has had due notice of this motion, and] the said judge having read and considered said bill and affidavit, it is therefore adjudged, ordered and decreed that the said C. D. do pay unto the said A. D. within ten days from the time a copy of this order shall be served upon him, the sum of ...... dollars, for the purpose of her maintenance and support during the pendency of this suit, and to enable her properly to carry on the same.

And on the further motion of the said A. D., an injunction is hereby awarded inhibiting and restraining the said C. D. from disposing of or incumbering his real estate in the bill and proceedings mentioned and described, consisting of a house and lot in ......, ..., the house containing five rooms, and now occupied by the said C. D. and also from disposing of or incumbering the ...... acres of land situated about ...... miles back of ...... in the county of ......, and state of ......, except that he is hereby permitted, if necessary, to incumber the said property to the extent of enabling him to raise the said sum of

...... [illegible]: all of which is adjudged, ordered and decreed accordingly.

And it appearing to the court that the above named A. D. is the wife of the defendant, and is without any means whatever, and it further appearing to the satisfaction of the court that this is a case in which bond should not be required, the foregoing injunction is awarded to take effect without bond.

And in lieu of formal notice the clerk of the said court is hereby directed to make two copies of this order, one to be served forthwith upon the said C. D., and the other to be returned by the sheriff of said county to said clerk's office, containing an endorsement of the time and manner of the service thereof.

F. B. W.

Judge of the .... Court of the .... of......

The clerk of said court will enter the foregoing in his chancery record as a vacation order, as of the .... day of ......, 19..

F. B. W.

Text page 250; Va. Code, § 5107; Barnes' W. Va. Code Ch. 64, § 10.

422. Order Directing Payment of Temporary Alimony to the Plaintiff in Term Time.

In the ...... Court of the ...... of ......, ...:

A. D.
v.
C. D. In Chancery. Order.

This day the plaintiff moved the court to require the defendant to pay to her a reasonable sum of money for her support and maintenance during the pendency of this suit and to enable her to carry on the same, and in support of said motion read her bill filed herein, which is verified by her own affidavit, and in further support thereof filed the affidavits of E. F. and G. H., and the defendant in opposition to said motion read his own affidavit and those of H. D. and J. K. Upon consideration of which the court doth sustain said motion, and doth adjudge, order and decree that the defendant, C. D., do pay unto the plaintiff, A. D., within ...... days from this date the sum of ...... dollars for the purposes named in the said motion *(or set out in detail each amount and the application thereof.)*

Idem.

49a. Decree of Divorce.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
B. B.
In Chancery. Decree.

This cause came on this .... day of ......, 19.., to be heard upon the plaintiff's bill and its exhibits; upon the answer of the defendant thereto and general replication to said answer; upon the depositions on behalf of the plaintiff and defendant duly taken and filed in the cause; and upon the argument of counsel on the part of the plaintiff and defendant.

Upon consideration whereof and it appearing to the court, independently of the admissions of either party in the pleadings or otherwise, that the said parties were lawfully married on the ...... day of ...., 19..; that *(In Virginia insert the following or other necessary jurisdictional facts as required by section 5105 of the Code*: both the said A. B. and B. B. have resided and have been domiciled in this state and have been actual bona fide residents of this state for at least one year preceding the commencement of this suit, and were so domiciled in and actual bona fide residents of this state at the time of bringing this suit and last cohabited in the ...... of ...... *In West Virginia. Insert the following or other necessary jurisdictional facts as required by section 7 of Chapter 64 of the Code*: the plaintiff is an actual bona fide citizen of this state and has resided in the state for at least one year immediately preceding the bringing of this suit and that the parties last cohabited in the County of ......); that the court is of the opinion that *(here insert a brief statement of the findings of the court)* and is therefore entitled to the relief prayed for in her said bill; it is adjudged, ordered and decreed:

(If a divorce from bed and board insert the following: that

the said plaintiff and said defendant be and they are hereby divorced from each other from bed and board. And it is further adjudged, ordered and decreed that the said B. B. do pay unto the said A. B. as alimony until the further order of this court, or until they, the said plaintiff and defendant, shall be reconciled to, or shall cohabit with each other again as husband and wife, but not in any event for a greater period of time than their joint lives, for the support and maintenance of the said A. B., the annual sum of ...... dollars, payable in quarterly installments of ...... dollars each, on or before the first days of April, July, October and December, in each year, the payment of said installments to commence on the first day of ......, in the year, 19.., and to continue thereafter during the period hereinbefore designated; but the court hereby expressly reserves the power at any time in the future to modify and change the said annual sum and the terms of its payment.)

(*If a decree from the bond of matrimony insert the following*: that the said A. B. and B. B. be divorced from the bond of matrimony which was created by the aforesaid marriage, and that the said marriage be, and the same is hereby dissolved, [*In Virginia add,* but neither party hereto shall marry again within six months from the date of this decree]; and the court doth further adjudge, order and decree that the said B. B. shall pay to the said A. B. as permanent alimony, annually, so long as both the said A. B. and B. B. shall live, the sum of ...... dollars, which shall be paid to the said A. B. on the first day of January of each year; that the care and custody of F. B. and M. B., the infant children of the said A. B. and B. B. be awarded to the said A. B., with whom they shall remain, she being a suitable and proper person to have their care and custody; and that the said B. B. shall furnish the sum of ...... dollars to the said A. B. annually, for the maintenance, support and education of the said F. B. and M. B. so long as they or either of them shall remain under the age of twenty-one and unmarried. And it is further ordered that the said A. B. be, and she is hereby restored to her maiden name of A. O. by which she shall hereafter be called and known.)

And it is further ordered that all interest that the said B. B. may have in the property, real and personal, of the said A. B.

shall cease and determine and that the said B. B. shall be (*if a complete divorce,* perpetually) separated from any interest therein.

And it is ordered that the said B. B. shall pay unto the said A. B. her costs by her in this behalf expended; and, nothing further remaining to be done in this suit, it is further ordered that the same be removed from the docket, but leave is reserved to the parties, or either of them, to make application to this court for further orders as are authorized by law.

Text page 231; Va. Code, §§ 5111-5115; Barnes' W. Va. Code, Ch. 64, §§ 11 and 13.

49b. Decree of Divorce Where There Is a Cross Bill in Virginia, or in West Virginia an Answer Setting up a Claim to Affirmative Relief.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
B. B.

This cause came on this .... day of ......, 19.., to be heard upon the plaintiff's bill and exhibits; (*In Virginia*: upon the answer and cross bill of the defendant thereof; upon the answer of plaintiff to defendant's cross bill and general replication to said answer; *in West Virginia*: upon the answer of the defendant to the plaintiff's bill and also in the nature of a cross bill setting up a claim to affirmative relief; upon the general replication to said answer, and the plaintiff's special reply in writing to so much of said answer as in the nature of a cross bill setting up a claim to affirmative relief) upon the depositions on behalf of the plaintiff and defendant duly taken and filed in the cause; and upon the argument of counsel on the part of the plaintiff and defendant.

(*If the relief prayed in the cross bill is denied and the plaintiff granted the divorce, here insert*: Upon consideration of all of which the court is of opinion that the defendant is not entitled to the relief prayed for in his said cross bill and that the same should be dismissed; it therefore is adjudged, ordered and decreed that the said cross bill of the defendant be and the same is hereby dismissed. But it appearing to the court, etc., as in Form 49a. *If the relief prayed in the bill is denied and the prayer of the cross bill granted make the appropriate changes in the above.*)

Idem.

50. Petition for a Complete Divorce.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Petition.
B. B.

To the Hon. ......, Judge of the said Court:

Your petitioner, A. B., respectfully sheweth unto the court:

(1) That on the .... day of ......, 19.., there was entered in this cause a decree granting to your petitioner a divorce from bed and board from the said B. B. on the ground of (*here state the ground*);

(2) That (*in Virginia*: three years have elapsed since the date of the said decree, *or if the ground be desertion,* since the date of the desertion of petitioner by the said B. B. as will appear from the proceedings of this cause; *in West Virginia*: two years have elapsed from the bringing of this suit) and there has been no reconciliation between your petitioner and the said B. B., nor is one probable, as will more fully appear from the evidence duly taken in support of this petition and attached hereto marked "Exhibit A" and which is asked to be read as a part hereof;

Wherefore your petitioner prays (*if necessary,* that this cause be reinstated on the docket of this court) that the decree for divorce from bed and board may be merged into a decree for a divorce from the bond of matrimony; and that the allowance for alimony heretofore made your petitioner may be continued. (*Insert additional necessary prayers as to children, property, etc.*)

And your petitioner will ever pray, etc.

A. B., By Counsel.

A. M., Counsel.

Text page 236; Va. Code, § 5115; Barnes' W. Va. Code, Ch. 64, § 13.

51. Decree for a Divorce from the Bond of Matrimony after a Former Divorce from Bed and Board.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
B. B.

This cause came on this .... day of ......, 19.., to be heard upon the papers formerly read, and the proceedings had therein, this cause having been reinstated on the docket on motion of the plaintiff upon the petition of A. B., praying (*state prayer of petition*), and was argued by counsel. On consideration of which, it appearing to the court, as established by the decree heretofore rendered in this cause, that the defendant had abandoned and deserted the plaintiff, and (*in Virginia*: that three years have elapsed since the date of said decree, *or* since the date of the desertion of the said plaintiff by the said defendant; *in West Virginia*: two years having elapsed since the institution of this suit) and it appearing from satisfactory evidence taken and filed herein, that the said parties have not been reconciled to each other since the rendition of the former decree herein, and that no reconciliation is probable, it is adjudged, ordered and decreed that (*in Virginia*: the decree for divorce from bed and board be and the same is hereby merged into a decree for a divorce from the bond of matrimony and the said A. B., plaintiff, and B. B., defendant, are forever divorced from each other but neither of the said parties shall marry again within six months from the date of this decree. *In West Virginia*: the bonds of matrimony heretofore celebrated and existing between the plaintiff, A. B., and the defendant, B. B., be and they are hereby dissolved, and the said parties are forever divorced from each other. *Add such additional provisions regarding alimony, custody of children, property rights, etc., as may be necessary.*)

Idem.

52. Order Annulling Marriage.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
B. B.

This cause came on this .... day of ......, 19.., to be heard upon the plaintiff's bill and its exhibits; upon the defendant's answer to said bill with general replication thereto; upon the depositions on behalf of the plaintiff and defendant taken and filed in the cause, and was argued by counsel. And it appearing to the court from the evidence that (*here state the facts proved to be true*). Upon consideration of which the court is of opinion that the plaintiff is entitled to the relief prayed for in his said bill. It is, therefore, adjudged, ordered and decreed that the marriage heretofore celebrated between the said A. B. and B. B., be, and the same is hereby declared to be null and void and of no effect whatever, and the same shall be taken, treated and held as if it had never been entered into between the said parties.

Va. Code, § 5100; Barnes' W. Va. Code, Ch. 64, § 4.

VII. Forms in a Suit for Partition

53. Bill in a Suit for Partition.

In the ...... Court of the ...... of ......, ...:

R. K. and S. K.
v. } In Chancery. Bill.
B. M., et als.

To the Hon. ......, Judge of the said Court:

Your orators, R. K. and S. K., respectfully show:

(1) That they are two of the surviving children of P. K., deceased, and that each of them owns and holds a one-fifth interest and together they own and hold a two-fifths interest in fee simple in a certain parcel of real estate in said ...... of ......;

(2) That another one-fifth interest in said lot of land is owned and held in fee simple by B. M. and A. M., who are the infant children and sole heirs of C. M., a sister of your orators who died intestate in the year ...., survived by her said two children and her husband, N. M., who has a curtesy right in one-third of the share of his deceased wife in said property, he having conveyed to his said two sons by two deeds of record two-thirds of his curtesy right in said property;

(3) That another one-fifth interest is owned by T. K., your orators' brother, who long since left this state and is no longer a resident thereof and whose present abode is unknown to your orators, nor do your orators know if he be living or dead, and if dead, who are his heirs or devisees;

(4) That one-fifth interest in said lot of land is owned and held in fee simple by D. K. and O. K. who are the infant children and sole heirs of X. K. a brother of your orators who died intestate in the year .... survived by his said two children and a widow, Y. K., who has a dower right in the share in said property owned by her deceased husband;

(5) The said infants own the following other real and personal estate: (*here describe estate.*) The guardian of the said infant defendants is (*here insert proper person who must be made a party to the suit*);

(6) (*In Virginia insert*: The following would be the heirs or distributees of the infant defendants were they dead:)

(7) That your orators and the said four infants, with the said Y. K. and N. M. are the co-owners in fee simple of said property known as ......, and the object of this suit is to procure a partition thereof in some method prescribed by law. Owing to the small size of said property it is obvious that a partition in kind is wholly impossible and no one of the co-owners is willing to take said property at its value and pay to the other co-owners the value of their respective shares, and your orators do allege that it is to the advantage and interest of all parties concerned that said property be sold as a whole in order to effect a partition and the proceeds of the sale be divided by the Court amongst the va-

rious parties according to their respective rights in said lot of land. The said property has an annual rental value at present of $...... per annum, and your orators have been recently offered the sum of $......, for the property as a whole, which is at the rate of $...... per front foot;

(8) That said property is assessed for taxation in the name of ...... Trustee, Land ...... and buildings No. ...... See ......;

A sufficient history of the title in said property of the present owners will now be given. (*Here set out title.*)

Forasmuch as your orators are remediless in the premises save in a Court of Equity, they pray that the said N. M. and Y. K., adults, and Q. M., guardian of D. K. and O. K. infants, and D. K. and O. K., and other persons unknown who may have an interest in said property, and B. M. and A. M., infants over the age of fourteen years, be made parties defendant to this bill and be required to answer the same, but answers under oath are hereby expressly waived as to all of the defendants, save as to such as by law are required to answer under oath; (*in Va. insert*: that a competent and discreet attorney-at-law be appointed guardian ad litem to represent the interests of the said infants in this proceeding, who, as well as any of the infant defendants who are over fourteen years of age, may be required to answer this bill on oath in proper person. *In W. Va. insert*: that a guardian ad litem be appointed to represent the interests of the said infants in this proceeding and that he be required to answer the bill) that proper process issue; that an order of publication may be made against T. K. and other persons unknown who may have an interest in said property; and duly published (*in Va.*: and posted); that partition of said lot of land known as ...... may be made and decreed in some manner prescribed by the statute, preferably by a sale of the whole thereof and division of the proceeds of the sale amongst the owners according to their interest; that in case the Court should decree a sale of said property in order to effect a partition thereof, the said offer of purchase be accepted; that all proper accounts and inquiries may be directed and taken; and that your orators may receive all such other and further general relief as to equity may seem meet and the nature of their case may require.

R. K.
S. K.
By Counsel.

Q. M., Counsel.

Text page 242; Va. Code, §§ 5279-5282; Barnes' W. Va. Code, Ch. 79, §§ 1-6.

54a. Answer of Adult Defendant in a Suit for Partition.

In the ...... Court of the ...... of ......, ...:

R. K. and S. K.
v. } In Chancery. Answer.
B. M., et als.

The separate answer of T. K. to a bill in equity exhibited against him and others in the ...... Court of the ...... of ......, by R. K. and S. K.

This defendant for answer to said bill or to so much thereof as she is advised that it is material and proper that she should answer, does answer and say that the allegations made in said bill are true and correct, and that she concurs in the prayer of the complainants and recommends that the Court make sale of the property No. .... Street, ..., ..., in order to effect a partition thereof and that the Court accept the price offered for it as stated in the bill.

And now having fully answered, &c.

T. K.
By Counsel.

A. M., Counsel.

Idem.

54b. Answer of Infant Defendants by Guardian Ad Litem in a Suit for Partition.

In the ...... Court of the ...... of ......, ...:

R. K. and S. K.
v. } In Chancery. Answer.
B. M., et als.

The answer of the four infant defendants, ... A. M.,

B. M., O. K. and D. K., by D. G., their guardian *ad litem,* to a bill in equity exhibited against said infants and others in the ...... Court of ...., by R. K. and another.

These defendants by their said guardian *ad litem* do answer and say that they are infants of tender years and not able to understand and to protect their rights as to the matters alleged in the bill of the complainants, and whether or not said complainants have a right to demand a partition of the property No. .... Street, ..., they are not advised, neither are they advised as to the proper price said property should bring in case the Court should decree a sale thereof. They do submit their rights and interests to the protection of the Court.

A. M.
B. M.
O. K.
D. K.
By D. G.
Their guardian *ad litem.*

Append affidavit as in Form No. 32.

Idem. For answer of infant defendant in proper person see Form No. 147e

55a. Decree Directing Commissioners to Make Partition.

In the ...... Court of the ......of ......, ...:

R. K., et al.
v.
B. M., et als.
} In Chancery. Decree.

This cause came on this day to be heard upon the complainants' bill; proof of legal service of proper process on the respondents, N. M. and Y. K., in person, who have failed, and still fail to appear, plead, demur, or answer the said bill, which is taken for confessed as to them; proof of legal service by publication and posting (*and in Virginia,* mailing) of proper summons by publication on the absent respondent, T. K., and other persons unknown, who have failed, and still fail to appear, plead, demur, or answer the said bill, as to whom the bill is set for hearing; upon the answer of the infant defendants, B. M. and A. M., by B. T., their guardian *at litem,* and the answer of D. T., guardian *ad litem;* and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that P. B., S. B. and J. W. who are hereby appointed commissioners for the purpose, after having first been duly sworn, do proceed to lay off and divide the real estate described in said bill, consisting of (*here describe the real estate*) in ...... equal parts, having regard to quality, quantity and value, and assign one of the said parts each to N. M., Y. K., T. K., B. M. and A. M.

But if the said commissioners should find that partition cannot be conveniently made of the said real estate among the aforesaid parties, then they are required to report the facts upon which their opinion is based to the court, and also whether the interests of those who are entitled to the said real estate, or its proceeds, will be promoted by a sale of the entire real estate, or allotment of part and sale of the residue; and in either case they are required to report their proceedings under this order to the court.

Idem. Va. Code, §§ 5279, 5282, 6069, 6070, 6186; Barnes' W. Va. Code, Ch. 79, §§ 1-3; Ch. 121, § 1; Ch. 124, §§ 11, 12.

55b. Decree Appointing Commissioners to Make Partition of Real Estate, and Directing Manner of Partition, Another Form.

(*After style of the suit, and the proper recitals as in Form No. 55a.*)

Upon consideration of which the court is of opinion and doth so adjudge, order and decree, that the parties to this suit are the owners in common in fee of the land in the bill and proceedings mentioned and described; and the court is further of opinion to and doth hereby decree that partition be made of the said real estate in said bill and proceedings mentioned and described; and that in making partition thereof the said real estate be so partitioned and divided that the defendant, N. M., shall receive as his share the one-half part thereof, and that the plaintiffs, R. K. and S. K., each receive as their shares one-fourth thereof.

And it is further adjudged, ordered and decreed that the commissioners hereinafter appointed in making partition of the said real estate do lay off and assign by proper metes and bounds the shares of Y. K. and T. K., together, assigning the residue of the tract, in like manner, to the defendant, B. M. and A. M., if partition of the said real estate can be properly made in that way.

And it is further adjudged, ordered and decreed, and the commissioners hereafter appointed are hereby so instructed, that if it should appear that permanent and valuable improvements have been made upon the said land by either or any of the co-parceners, that the part so improved, if it can be done without injury to the others be assigned to the improver thereof, without charging either or ony of said co-parceners with the costs of value of such improvements.

And for the purpose of making said partition the court doth hereby appoint ...... commissioners for the purposes herein specified, any ...... of whom may act.

And it is further adjudged, ordered and decreed that before the said commissioners or any of them shall proceed to discharge their duties as such commissioners, that they, and each of them shall take an oath to faithfully and impartially make partition of the real estate in this cause in accordance with the terms and requirements of this decree; and they shall return a report of what they shall do under this decree as such commissioners to a future term of this court, accompanying the same with a description, by proper metes and bounds, of the respective parcels allotted the co-parceners entitled to share in the partition of said real estate, together with all evidence which may be taken before them pertaining to the matter of said partition, and plats and deeds used, read and made in connection therewith.

And it is further adjudged, ordered and decreed, that if the said commissioners shall determine that the said property is not susceptible of partition, they shall so report to this court, setting forth in such report the facts upon which they base their conclusion with reference thereto.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

56. Oath to Be Taken and Subscribed by Commissioners Appointed to Make Partition.

State of ......,
County of ......,
To-wit:

R. K. and S. K.
v.
B. M., et als.
} In Chancery.

Pending in the ...... Court of the ...... of ......, ...:

We, the undersigned commissioners, duly appointed to make partition in the above entitled cause, of the real estate in the bill and proceedings in said cause mentioned and described, do solemnly swear that we will fairly and impartially make partition of the said premises, according to the rights and interests of the parties, as declared by the decree appointing us as such commissioners, if the same can be done consistently with the interests of the parties; and we will true report thereof make to the court.

But if the said premises are not susceptible of partition, we will likewise make true report thereof.

....
....
....

Taken, subscribed and sworn to before me this .... day of ......, 19..

....
Notary Public *or other officer.*

Idem.

57. Report of Commissioners Appointed to Make Partition of Real Estate.

In the ...... Court of the ......of ......, ...:

R. K., et al.
v.
B. M., et als.
} In Chancery.

To the Hon. ......, Judge of the said Court:

The undersigned, commissioners appointed by a decree rendered by this honorable court in the above entitled cause to make partition of the real estate in the bill and proceedings in said cause mentioned and described, respectfully submit the following report of their actions in the premises:

They report that they were first duly sworn according to law, and attached to the accompanying report is a copy of the oath by them severally taken and subscribed.

They further report that they caused to be served upon all the defendants in said cause reasonable notice of the time when, to-wit, on the .... day of ......, 19.., they would enter upon said real estate and make partition thereof, as will appear from a copy of said notice and the return of service thereon hereto attached as a part of this report, marked "Exhibit A."

They further report that, after having taken said oath and caused such notice to be served as aforesaid, they went, on the .... day of ...., 19.., upon the said premises and viewed the same, each of the said commissioners being then and there present; and that the lands mentioned in the bill and proceedings of said cause are described as follows, to-wit: *(describing them)*, situate in the county of ...... and state of ......

If partition can be made, insert: They further report that, in the judgment of the undersigned, the above-mentioned lands are susceptible of division without manifest prejudice to the parties in interest.

They further report that in pursuance of said decree the undersigned then proceeded to make partition and division of the said lands, and by sufficient metes and bounds to divide, sever and set off the same, quantity and quality being by them relatively considered, to and among the several persons hereinafter mentioned, in severalty, according to their respective rights and interests therein, as the same were adjudged, ordered and directed by the court, and that they have made partition and division of the said lands as follows, viz.: *here insert the assignments made with an accurate description of the lands attaching a survey if necessary.*

If partition cannot be made, insert: They further report that partition of the said lands cannot be conveniently made for the following reasons: *(here state reasons.)*

The expenses attendant upon this report are as follows: (*here insert itemized statement of expenses.*)

Witness our hands this .... day of ......, 19..:

....

....

....

Commissioners.

Idem.

58. Decree Confirming Report of Commissioners Making Partition.

In the ...... Court of the ......of ......, ...:

R. K., et al.
v.
B. M., et als.
In Chancery. Decree.

This cause came on this day to be heard upon the papers formerly read; and the report of the commissioners, dated on the .... day of ......, 19.., and the exhibits filed therewith, which report was filed on the .... day of ......, 19.., and to which no exception has been taken; and has been returned more than ten days and was argued by counsel.

On consideration whereof, and it appearing to the court that in the partition made by the commissioners, (*here describe partition in detail*) the court doth adjudge, order and decree that the said report of the said commissioners be confirmed, and that the partition in manner and form aforesaid made, be held firm and stable.

(*In Virginia insert*: It is further adjudged, ordered and decreed that the titles to the lands as herein partitioned shall by virtue of this decree vest in the persons to whom the shares are assigned as set forth above and that this decree be recorded in the current deed book of this court and indexed in the names of all parties hereto; *or insert*: And it is ordered that mutual conveyances be executed by each of the parties to the other, of the several lots hereinbefore mentioned, assigned and allotted to each of them as aforementioned; *or, if any of the parties be minors or otherwise incapable of making conveyances insert*: And it further appearing to the court that ...... and ......, are infants and so incapable of executing deeds among and to each other, it is therefore adjudged, ordered and decreed that ...... who is hereby appointed a special commissioner of this court for the purpose, shall execute and deliver to each of the said parties a separate and proper deed with special warranty of title conveying to said parties by proper metes and bounds the property allotted to them, and for his services in this behalf the said ...... shall receive the sum of $...... to be taxed as a part of the costs in this cause;) and that the costs of this suit be proportionally borne by the parties thereto, including the sum of ...... dollars each to the commissioners making said partition for their services in and about the same.

Text page 254; Va. Code, §§ 5279-5282, 6296, 6297; Barnes' W. Va. Code, Ch. 79, § 1-3.

59. Decree Authorizing Sale in a Suit for Partition.

In the ...... Court of the ......of ......, ...:

R. K., et al.
v. } In Chancery. Decree.
B. M., et als.

This cause came on this .... day of ......, 19.., to be again heard upon the papers formerly read and upon the depositions of ...... duly taken on ......, 19.., and filed in the Clerk's Office; (*or,* upon the report of the commissioners, dated on the .... day of ......, 19.., and the exhibits filed therewith, which report was filed on the .... day of ......, 19.., and to which no exception has been taken); and was argued by counsel.

Upon consideration whereof and it being shown to the court that the parcel of real estate known as No. .... Street in......: hereinafter mentioned and described, the partition of which is sought in this cause is owned in fee simple in undivided shares by the parties to this suit as follows: (*here set forth ownership.*)

And it appearing that the complainants have a clear right to demand a partition of said parcel of real estate known as No.... ......Street, as prayed in their Bill and it being shown to the satisfaction of the Court that no one of the said parties is willing to accept an allotment at the fair value of said parcel of real estate and that partition in kind of said parcel of real estate cannot possibly be made to advantage amongst the parties entitled thereto, the court is therefore of opinion and it doth decide that it is necessary and to the advantage of said parties to decree a sale of the said parcel of real estate as a whole in order to effect a partition thereof and to divide the proceeds of the sale amongst the parties according to their respective rights and it doth so adjudge, order and decree;

And it appearing from the said deposition of ...... and the Exhibit therewith that ...... Corporation offers to purchase said parcel of real estate as a whole at the price of ......, to be paid in cash and that said price so offered is adequate and is acceptable to all the adult parties and that it is clearly to the advantage of all parties to the cause that it should be accepted; and in order to carry said sale into effect it is ordered that said ...... Corporation do deposit said cash sum of ...... to the credit of the court in this cause in ...... Bank of ......, ..., and do take from said .... Bank a certificate showing said deposit and do deliver the same to D. G. who shall thereupon as a special commissioner of the court for the purpose hereby appointed, prepare, execute, acknowledge for record and deliver to said ...... Corporation a deed conveying to it with special warranty the parcel of real estate described in the Bill of the Complainants.

It is ordered that said special commissioner, D. G., be authorized to attach to the Deed to be so executed by him and as a part thereof a copy of the map dated ...., 19.., prepared by H. B. made an Exhibit with the said Deposition of .... and which shows the said property No...... ...... Street and other property on the east and west thereof and to convey said property No .... Street by reference to said map and by such other description as may be appropriate and convenient; and the said Special Commissioner will make report to the Court of his action under this decree returning therewith the certificate of deposit hereinbefore mentioned.

It is further ordered that such of the adult parties as may elect to do so with the wife of any one of the male parties who may be married shall be at liberty to unite as grantors in the deed to be executed by said special commissioner and may convey their shares in the said property No ...... Street to ...... Corporation with such covenants of title as may be acceptable to said grantors. (*Or, insert*: And it is further adjudged, ordered and decreed that ...... and ...... who are hereby appointed special commissioners for the purpose, shall sell the property in the bill and proceedings described at public auction in front of the ...... at ......, ..., after advertising the time, terms and place of sale for at least ...... weeks in such manner and form as they may deem advisable upon the terms, *here state the terms;* and shall make report of their action hereunder to this court; but before proceeding with the execution of this decree the said ...... and ...... or one of them shall give bond before the Clerk of this Court in the penalty of $...... and conditioned as the law directs.)

Idem.

60. Decree Authorizing Delivery of Deed, and Distribution of Fund in a Suit for Partition.

In the ...... Court of the ...... of ......, ...:

R. K., et al.
v. } In Chancery. Decree.
B. M., et als.

By consent of all the adult parties to this cause and of the infant defendants by their guardian *ad litem,* which consent is endorsed on the sketch for this decree, this cause is made a vacation cause to be heard, determined and proceeded in in the present vacation of the court in the same manner and with like effect as if heard, determined and proceeded in in term time.

And, therefore, this cause with the consent of all the adult parties hereto and of said infant defendants by their guardian *ad litem* came on this day to be heard in vacation upon the papers formerly read and upon the report made by Special Commissioner, D. G., as to his action under the decree in this cause of ......, 19.., which report is dated ......, 19.., and is this day filed; and was argued by counsel.

Upon consideration whereof, and it appearing from said report and the certificate of ...... Bank, dated ......, 19.., attached thereto, that ...... Corporation, the purchaser of the property No. ...... Street in the ...... described in said decree of ...... 19.., has deposited in said ......, Bank to the credit of the Court in this cause the sum of ...... dollars, the full purchase price of said property, the Court doth approve and confirm the action of said ...... Corporation in making said deposit in accordance with said decree.

It appearing that R. K. and S. K., two adult owners in fee each of one-fifth share in the property so sold, are each entitled to one-fifth of said sum of ...... dollars, it is ordered that M. O., who is hereby appointed a special Commissioner of the Court for the purpose, do draw his checks on an attested extract hereof on the fund to the credit of the Court in this cause in ...... Bank in favor of R. K. and S. K. (*Insert additional provisions covering the distribution of the residue of the fund.*)

It is ordered that the said Special Commissioner, M. O., do make a further report to the Court of his action under said decree of ......, 19.., as soon as the deed which the purchaser ...... Corporation is now entitled to receive shall have been executed and delivered by him to it as required by said decree of ......, 19..

Idem.

VIII. Forms in Proceedings to Revive Suits

61. Bill of Revivor by the Original Complainant against the Executor of the Original Defendant, Who Had Answered the Original Bill before His Death.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
E. F., as Executor of the last will and testament of C. D., deceased. } In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., humbly complaining, respectfully sheweth unto the court:

(1) That heretofore he filed his bill of complaint in this court against C. D., praying, amongst other things (*here insert prayer of original bill in such manner as to show the right to revive*

against the executor of the deceased defendant). To which said bill the said defendant answered, and other proceedings were had, as by the same proceedings now remaining in this court will appear.

(2) And your orator further charges that before the said cause was brought on to a hearing, the said C. D. departed this life, leaving a last will and testament in writing, duly executed in his lifetime, of which he appointed E. F., of said ......, executor, who, since the death of the said C. D. has duly proved the same and obtained letters testamentary thereon, and has possessed himself of assets of his testator sufficient to answer the demands of your orator against the said testator, as stated in his aforesaid original bill.

(3) And your orator is advised that the said suit having abated by the death of the said C. D., he is entitled to have the same revived against the said E. F., as executor aforesaid, and restored to the condition in which it was at the time of the death of the said C. D.

Your orator therefore prays that the said E. F. as executor aforesaid, may be made a party defendant to this bill, as well, also, as to said original bill, and may be required to answer the same and may either admit assets of his testator in his hands to satisfy your orator's aforesaid demand, or set forth a full and particular account of the personal estate of his testator which has come to his hands, and of the application thereof; (*waive oath if necessary*) that proper process issue; and that the said suit may be revived against the said E. F. and be restored to the same condition that it was in at the time of the death of the said C. D. And in case the said E. F. shall not admit assets of his testator in his hands to satisfy your orator's aforesaid demand, that an account may be taken, under the direction of this court, of the estate and effects of the said testator, received by or for the use of the said E. F. as executor aforesaid, and of the application thereof, and grant to your orator such other relief as the nature of this case may require.

A. B.
By Counsel.

Q. M., Counsel.

Text Page 260.

62. Order Awarding Scire Facias to Revive a Suit.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
E. F., Executor. } In Chancery. Order.

On motion of the plaintiff a writ of scire facias is awarded against E. F., as executor of the last will and testament of C. D., deceased, returnable to ...... Rules (*or* court).

Text page 261; Va. Code, §§ 6168, 6169; Barnes' W. Va. Code, Ch 127, §§ 4, 5.

63. Writ of Scire Facias Reviving Action against a Personal Representative.

...... of ......,
...... of ......, to-wit:

To the Sheriff (*or* Sergeant) of said County (*or* City) Greeting:

Whereas, a suit has been pending in our .... Court of ...... on the chancery side thereof, between C. C., plaintiff and D. D., defendant, and before judgment or decree was rendered therein, the said D. D. died, and the plaintiff has applied for a *scire facias* as against E. F. as executor of the last will and testament of the said D. D.

Therefore, we command you in the name of the Commonwealth of Virginia, (*or* State of West Virginia) that you make known to the said E. F. as executor as aforesaid, that he be before our ...... Court of ......, at the courthouse thereof, on the first day of the next ...... term thereof (*or* in the clerk's office of our said ...... Court at the rules to be holden for the said court on Monday, the .... day of ......, 19..) to show cause, if any he can, why the suit should not proceed in the name of him, the said E. F. to a final judgment or decree; and that you have then and there this writ and make return how you have executed the same.

Witness Y. Z., clerk of our said court, at the courthouse thereof, in the ...... of ......, and state aforesaid, the .... day of ......, 19.., and in the ...... year of the commonwealth (*or* state).

Y. Z., Clerk.

Idem.

64. Order for Revival of Suit.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
E. F., Executor } In Chancery. Decree.

This cause came on to be heard this .... day of ......, 19.., and it appearing to the court that on the .... day of ......, 19.., the complainant exhibited his bill in this court against C. D. for the purpose of (*here set out purpose of suit*); that the said C. D. appeared and filed his answer to said bill, to which the complainant filed a replication; (*here set out any further proceedings that were had in the cause*); that before any further proceedings were had in said cause, the said C. D. died, having first duly made his will and the said will having been duly admitted to probate, E. F., who was named as executor therein, was appointed and duly qualified as such; that the said suit and proceedings abated by reason of the death of the said C. D.; and that the plaintiff has exhibited his bill of revivor against the defendant, E. F., as executor of the last will and testament of C. D., deceased; and that defendant, having been duly served with the process of summons of this court (*in West Virginia* more than thirty days prior to the present term) has failed to appear and put in his answer; (*or* that a scire facias was on the .... day of ......, 19.., sued out by the complainant against the said E. F., as executor of the last will and testament of C. D., deceased, directing the said E. F. to show cause why the suit should not proceed in his name; that the said *scire facias* was duly served on the said E. F. on the .... day of ......, 19.., and no sufficient cause having been shown against it); it is ordered that the said suit and proceedings do stand revived against E. F. as executor aforesaid, and be in the same condition they were at the time of the death of the said C. D.

Idem.

IX. Forms in Miscellaneous Suits

IXA. Forms in a Suit to Assign Dower

65. Bill for Dower in an Ordinary Suit by a Widow.

In the ...... Court of the ...... of ......, ...:

C. B. v. Jane B., Susan B., Robert B., adults and Thomas B., an infant.	In Chancery.	Bill.

To the Hon. ......, Judge of the said Court:

Your orator, C. B., complaining, showeth unto the Court:

(1) That she is the widow of A. B. who recently departed this life intestate in this county; that the said A. B. was, during the marriage between him and your complainant, seized of estates of inheritance in certain real estate situate in this county and the counties of F. and C., which real estate is as follows, to-wit: a certain tract of land in this county conveyed to the said A. B. and A. R. by deed dated the .... day of ......, 19.., recorded in the office of the clerk of the ...... court of the ...... of ......, in Deed Book ......, page ...., an attested copy of which is filed herewith, marked exhibit "A" and asked to be taken and read as a part of this bill; a certain tract of land situate in the said County of F. conveyed to the said A. B. by H. S. by deed bearing date on the .... day of ......, 19.., and duly of record in the Clerk's Office aforesaid in Deed Book No. ...., at page ...., a certified copy of which is herewith filed as exhibit "B" and made a part of this bill; a certain tract of land in the said County of C. conveyed to the said A. B. by S. T. by deed dated as of the .... day of ......, 19.., and recorded in the office of the Clerk of the ...... Court of the ...... of ......, in Deed Book No. ...., at page ......, an office copy of which is herewith filed, as a part hereof, marked exhibit "C."

(2) Your complainant further showeth that the said A. B. died seized of all the said real estate and that your complainant's

dower, or her right of dower, therein has in no manner been lawfully barred or relinquished; that the following persons are the only children and heirs-at-law of said A. B., to-wit: Jane B., Susan B., Robert B. and Thomas B., the last named of whom is an infant under the age of twenty-one years; that your complainant is entitled to have her dower assigned in the said real estate, and she desires the same to be assigned to her.

In tender consideration whereof, your complainant prays that the said Jane B., Susan B., Robert B. and Thomas B. may be made parties defendant to this bill; that proper process issue; that the said adult defendants be required to answer the same; (*in Virginia add*: but answer under oath is hereby waived, save as to such as by law are required to answer under oath; *in West Virginia add*: on their corporal oaths; *in Virginia here insert*: that a competent and discreet attorney-at-law be appointed guardian *ad litem* to represent the interests of the said infant in this proceeding, who, as well as the said Thomas B., the infant defendant who is over fourteen years of age, may be required to answer this bill on oath in proper person; *in West Virginia insert*: that a guardian *ad litem* be assigned the infant defendant, Thomas B., to defend his interests in this suit); that proper process issue; that your complainant's dower in the said real estate be assigned, set out and allowed to her by the decree of your honorable court; that all proper orders may be made, and all proper inquiries be directed, and that all such other, further and general relief may be afforded your complainant as the nature of her case may require, or to equity shall seem meet. And your complainant will ever pray, etc.

C. B.,
By Counsel.

Q. M., Counsel.

66. Interlocutory Decree, Appointing Commissioners to Assign Dower.

In the ...... Court of the ...... of ......, ...:

James Hart v Jane Hart, in her own right and the said Jane as administratrix with the will annexed of the estate of Thomas Hart, deceased, John Hart, Henry Wells and Mary Wells, his wife, late Mary Hart, and Anne Hart by her guardian *ad litem.*	In Chancery. Int. Decree.

The defendant, John Hart, who is not a resident of this State, and against whom the complainant appears to have proceeded in the maner prescribed by law against absent defendants, still failing to appear and answer, on motion of the complainant, by counsel, the court doth set the cause for hearing as to that defendant. And the cause coming on to be heard this .... day of ......, 19.., as to the other defendants upon the bill, the answers in person of the adult defendants, Jane Hart, in her own right and also as administratrix with the will annexed of Thomas Hart, deceased, and Henry Wells and Mary, his wife, of the infant defendant, Anne Hart, by B. T., her guardian *ad litem,* and of B. T., the guardian *ad litem* of Anne Hart in proper person; the replications thereto, the exhibits filed, and the evidence of witness, and was argued by counsel. On consideration whereof the court doth adjudge, order and decree, that T. W., J. C., R. F., E. K. and S. N., be appointed commissioners, who, or *any three of them,* being first duly sworn, shall well and truly allot and assign to the defendant, Jane Hart, widow of Thomas Hart, deceased, by metes and bounds, one full and equal third part, in quality and quantity, of the tract of land called Fairfield, in the bill and proceedings mentioned, whereof the said Thomas Hart died seized of an estate of inheritance, to have and to hold the said third part for the term of her natural life, as and for the dower of the said Jane Hart in the said land. And that the same commissioners, or any three of them, being first duly sworn, do make equal and fair partition in severalty of the residue of the said tract of land, between the complainant, James Hart, and the defendants, John Hart, Mary Wells, wife of Henry Wells, and Anne Hart, who are children and heirs of the said Thomas Hart, deceased. And the commissioners are directed to report their proceedings in pursuance of this decree to the court, in order for a final decree.

And the court doth further adjudge, order and decree that the injunction awarded in this cause by the judge in vacation, *be dissolved,* and that the defendant, Jane Hart, as administratrix with the will annexed of the said Thomas Hart, deceased, do render a full, true and perfect account of her administration of the estate of the said Thomas Hart, deceased, before one of the commissioners of this court, which account the said commissioner is directed to audit, state and settle, and make report thereof to the court, together with any matter *specially stated,* deemed pertinent by himself, or required by any of the parties to be stated.

67. Report of Commissioners Appointed to Assign Dower.

State of ......,

...... of ......,

C. B.
v.
Jane B., et als. } In Chancery. Report of Commissioners.

Pending in the ...... Court of the ...... and State aforesaid.

To the Hon. ......, Judge of the said Court:

We, the undersigned commissioners appointed by this court by the interlocutory decree made and entered in said cause on the .... day of ......, 19.., to assign the dower of C. B., widow of A. B., deceased in the property hereinafter described, situate in ......, respectfully report that we, having been first duly sworn as required by law faithfully and impartially to execute the trust reposed in us, did on the .... day of ......, 19.., meet on the premises hereinafter described, in obedience to the mandate of, and in conformity to the requirements of said decree. A. B. by J. M., her attorney, and the said Jane B. and Julia B., heirs at law of the said A. B. in person appeared at the time and place aforesaid. Whereupon we caused a survey to be made of the lands and premises particularly described in said decree, that is to say (*describing particularly the lands and premises*), a map of which survey is hereto annexed and made a part of this court.

We do further report that we have assigned and laid off to the said C. B. for her dower the one-third part of said premises as follows: (*here particularly describe the part set off as dower.*)

We do further report that our charges attending said assignment, including our fees as commissioners, are as follows, to-wit: (*here set out itemized account.*)

In witness whereof we have hereunto set our hands this .... day of ......, 19..

....
....
....
Commissioners.

68. Final Decree Assigning Dower, Etc.

In the ...... Court of the ...... of ......, ...:

James Hart v. Jane Hart, in her own right and the said Jane as administratrix with the will annexed of the estate of Thomas Hart, deceased, John Hart, Henry Wells and Mary Wells, his wife, late Mary Hart, and Anna Hart by her guardian *ad litem.*	In Chancery. Final Decree.

This cause came on this .... day of ......, 19.., to be finally heard upon the papers formerly read, the report of T. W., J. C., R. F. and S. N., four of the commissioners appointed to allot to the defendant, Jane Hart, her dower in the lands of her late husband, Thomas Hart, deceased, and to make partition of the residue of said lands in severalty, amongst the children and heirs of the said Thomas Hart; and the report of Master Commissioner M. G. of his settlement of the administration account of the said Jane Hart, as administratrix with the will annexed of the said Thomas Hart, deceased; to none of which reports is there any exception—and was argued by counsel. On consideration whereof, it appearing to the court, that in the partition made by the said commissioners to and amongst the said children and heirs of the said Thomas, of the lands in the bill and proceedings mentioned, lot number one (1), embracing (*here describe it*), fell to the share of John Hart; lot number two (2), embracing (*here describe it*), fell to the share of Anne Hart; lot number three (3), embracing (*here describe it*), fell to the share of Mary, wife of Henry Wells; and lot number four (4), embracing (*here describe it*), fell to the share of James Hart; and it also appearing to the court that by the allotment of the same commissioners dower was assigned to the said Jane Hart, in the lands whereof her said husband was seized of an estate of inheritance, during the coverture between them, according to the metes and bounds following, namely, (*here set forth the boundaries*), the court doth approve and confirm the said reports, and doth adjudge, order and decree that the said Jane Hart shall be seized for and during the term of her natural life of the land so alloted to her as aforesaid, as and for her dower in her said husband's estate, by the commissioners aforesaid, according to the metes and bounds in the said report designated. And the court doth further, adjudge, order and decree that mutual conveyances with special warranty be executed by the said James Hart, John Hart, Mary Wells and Anne Hart, to each other (the conveyance in behalf of the said Anne Hart, who is an infant under the age of twenty-one years, to be executed by Henry Wells, the husband of the said Mary, which said Henry is hereby appointed a special commissioner for that purpose), of the several lots or portions of land hereinbefore mentioned, assigned and alloted to each of them as aforesaid.

And the court doth further adjudge, order and decree, that the said James Hart do retain in her hands, subject to the future order of the court, the sum of ...... dollars, being the amount required to discharge the demand which may be payable from the estate of the said Thomas Hart, deceased, to H. C., upon the contingency set forth in the report of master commissioner, M.

G., and do pay to the several distributees of the said Thomas Hart, deceased, their respective portions of the residue of the sum ascertained by the report of master commissioner, M. G., to remain, of the assets of the said Thomas' estate, in the hands of the said Jane, to be administered; that is to say, to the complainant, James Hart, ... dollars, being two-twelfths of the same, with interest after the rate of six per cent. per annum on ...... dollars, part thereof from the .... day of ......, 19.., until paid; to John Hart the same sum, with like interest on the same sum, from the same time, until paid; to Mary Wells, the same sum, with interest on the same sum, from the same time, until paid; to Anne Hart by her guardian, lawfully appointed and constituted to receive the same, the same sum, with interest on the same sum, from the same time, until paid; and to herself, the said Jane Hart, ... dollars, being four-twelfths of the said distributable surplus in her lands as aforesaid, with interest after the rate aforesaid on ...... dollars, part thereof, from the .... day of ......, 19.., until paid. And the court doth further adjudge order and decree, that the said Jane Hart do forthwith deliver to the said James Hart, the complainant, the four blooded mares specially bequeathed him by the said Thomas Hart's will.

But the effect of this decree, as to the payments to be made by the said Jane Hart, of the distributive shares aforesaid, to the children and distributees of the said Thomas Hart, deceased, and as to the delivery to the said James Hart, of the specific bequest of the blooded mares aforesaid, is to be suspended, until the several parties to whom such payments and such delivery are to be made, or someone for them, shall respectively execute, according to law, refunding bonds in sufficient penalties, and conditioned as the law directs.

And leave is reserved to the said complainant, James Hart, and to either of the defendants, children and distributees of Thomas Hart, deceased, to apply to the court at any time hereafter for further directions touching the said sum of ...... dollars reserved in the hands of the said Jane, as hereinbefore mentioned, in order to satisfy the contingent demand of the said H. D.

It is further adjudged, ordered and decreed that this decree be recorded in the current deed book of this court (*or, in W.*

Va., say, in the current deed book of the County Court of ...... County) and indexed in the names of the parties to this cause.

And the court doth further adjudge, order and decree that the costs of this suit shall be paid by the parties thereto on equal proportions. And leave is reserved to the infant defendant, Anne Hart, at any time within six months after she shall attain her age to show cause against this decree.

IXB

69. Bill or Petition to Perpetuate Testimony.

In the ...... Court of the ...... of ......, ...:

C. D.
v. } In Chancery. Bill.
A. B.

To the Hon. ......, Judge of the said Court:

Your orator, C. D., respectfully represents unto Your Honor:

(1) That on the .... day of ......, 19.., he entered into a certain contract with A. B. as follows: (*here state the contract, or if the suit be not on contract state the case*);

(2) That the said A. B. wholly broke and failed to perform his contract in this that he did not (*now state the case, or if it be not on contract substitute the true narrative of the case, substituting the same in place of the words "wholly broke and failed" and the words following*);

(3) That although your orator hath just cause of complaint against the said A. B. because of his conduct and behavior in the premises, and at the proper time purposes to institute suit against the said A. B., yet at this time your orator is prevented from instituting suit against the said A. B. for the following reasons: (*here state such reasons as in law may be good and sufficient why suit may not be instituted at present*);

(4) Your orator avers that in order to maintain his suit, when he shall be at liberty to institute the same, the testimony of X. L. is absolutely essential to him, but the said X. L. is a very aged person and in infirm health (*or* is about to leave the State), and

your orator fears that should his testimony not be taken at once, he may died or be in such feebleness of body or mind (*or* will have left the State) as that his testimony cannot be taken, if the taking thereof shall be postponed until the said suit shall have been brought and matured for the taking of testimony;

Wherefore, your orator prays that the said A. B. be made a party to this suit, and be compelled to answer this bill; that proper process issue; that your orator be allowed, upon proper notice to the said A. B., to take the depositions of X. L. and that the same be perpetuated by decree of this court in this cause to be used and read in such suit as your orator may hereafter institute against the said A. B., upon the cause of action described in this bill.

(*If it is desired to use a petition the above form will suffice but the petition must be directed to a commissioner in chancery of the court wherein the bill would have been filed. The prayer of the petition should be*: Wherefore your petitioner prays that the said A. B., shall be notified of the desire of your petitioner to take the testimony of the said X. L. and the time and place when said testimony will be taken; that the said testimony shall be taken, put in writing and returned with a report of the proceedings to the clerk's office of this court.)

C. D.
By Counsel.

Q. M., Counsel.

(*The bill or petition should be verified by affidavit as in Form No. 32.*)

Text page 271; Va. Code, § 6235; Barnes' W. Va. Code, Ch. 130, § 39.

IXC. Forms in a Suit to Quiet Title to Real Estate

70. Bill to Quit Title to Real Estate.

In the ...... Court of the ...... of ......, ...:

A. B. and
C. D.
v.
B. B.'s heirs, devisees,
and other successors in title.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Humbly complaining, your orators, A. B. and C. D., showeth unto the Court:

(1) That the said A. A. is the owner and occupant of a lot of land in the ...... of ...... (*here describe property*).

(2) That ...... (*here set out particular facts leading to and justifying claim of adverse possession and showing that the title is somewhat doubtful or that plaintiffs have no title of record*). Annexed hereto and marked "Exhibit A" is a rough sketch showing the situation of the lots of land in question.

(3) Your orators further show unto the Court that when the said lots were conveyed to the said A. B. he thereupon took actual, adverse, notorious, continuous, and exclusive possession and control of the whole of the said lots as conveyed to him, and that since that time the said A. B. has continued to exercise such possesssion and control of the said lots until he conveyed a portion thereof to the said C. D., and that since that time he and the said C. D. have retained and exercised similiar possession and control of the said lots as owned by them.

(4) Your orators further show unto the Court that the said B. B. in his life time and his successors in title since his death have never claimed any title to any part of the said lots, and if they ever had any such title the same has been abandoned by them more than 80 years ago, and any such title has long since been barred by the statute of limitations.

(5) Your orators further show unto the Court that owing to the fact that in the deed on October ......, ..., B. B. conveyed to A. B. the aforesaid lot of ground, intended to be a lot

.... x ...., but actually conveyed as .... x ....at ...... in ...... of ......, a question has been raised that they have no record title to the western ...... feet of the said original lot, and which is described in the first part of this bill. The said B. B. died many years ago and his heirs, devisees or other successors in title are unknown to your orators and your orators are entitled to have them made parties to this suit as parties unknown and to have a decree entered establishing and quieting the title of your orators to the said strip of ground herein first described, being a strip of land 10 feet wide and 165 feet deep adjoining the City property.

IN TENDER CONSIDERATION WHEREOF and forasmuch as your orators are remediless in the premises save in a court of equity where, etc., your orators pray that the heirs, devisees and other successors in title of ...... deceased, may be made parties defendant to this bill by the general description of "persons unknown" and that they may be summoned to answer this bill in the manner provided by statute; that the title of the said ...... and the said ...... in the said western portion of the said original lot of land may be quited and established; and that the Court may declare and decree that all persons claiming title to the said land under or through the said ...... are barred to all right and interest in the said land; and that Commissioners may be appointed by this Court to release and convey unto your orators according to their respective rights all the right, title and interest of the said unknown defendants in the said land which is described in the first part of this bill as a strip of land.... feet wide by .... feet deep ......, and that your orators may receive all such other, further and general relief as to equity may seem meet and the nature of the case may require.

And your orators will ever pray, etc.

A. B.
C. D.

A. B. and C. D. v. B. B.'s Heirs, Devisees and Other Successors in Title.	State of ......, ... of ......, to-wit:

A. A. and C. D., being first duly sworn, depose and say that the allegations contained in the foregoing bill are true to the best of their knowledge, information and belief.

A. B.
C. D.

Subscribed and sworn to by the said A. B. and C. D. before me a Notary Public within and for the said ...., on this ....day of ......, 19.., in my ...... aforesaid.

M. N.
Notary Public.

Text page 270.

71. Decree Quieting Title to Real Estate.

In the ...... Court of the ...... of ......, ...:

A. B. and C. D.
v.
B. B.'s heirs, devisees and other successors in title. } In Chancery. Decree.

THIS CAUSE, which has been regularly matured at rules docketed and set for hearing, came on this day to be heard upon the bill of the complainants, upon the proof of the due posting of a copy of the order of publication awarded in this cause on the .... day of October, 19.., (publication of a copy of said order in a newspaper having been dispensed with), upon the depositions of A. B., C. D., and E. F., regularly taken and filed, and upon certified copies of the following deeds put in evidence and filed and read by the Court: (*here insert deeds by name and reference.*)

And this cause was thereupon argued by counsel.

UPON CONSIDERATION WHEREOF the Court is of opinion that the allegations contained in the bill of the complainants are established, and that it is shown by the proofs that A. B., and those under whom he claims title, has had for more than forty (40) years actual, adverse, notorious, continuous and exclusive possession of the lot of land conveyed to him by B. B. and wife, by the said deed of ......, ..., ..., described.

And the Court doth accordingly adjudge, order and decree that any rights, interest or title that the defendants may have in or to any of said lots of land has long since been barred by the statute of limitations, and that the title of the complainants to their respective lots of land should be, and it is hereby established and quieted as to the entire amount of land conveyed to them and occupied by them as aforesaid. And the Court doth further order that D. G., who is hereby appointed a special commissioner for the purpose, do prepare, execute, acknowledge for record and deliver to each of the complainants a deed, with special warranty, releasing and quit-claiming unto each of the complainants all of the right, title and interest of every character of the defendants in the said lots of land now owned by the said complainants respectively.

Nothing further remaining to be done in this cause, it is ordered that the same be stricken from the docket, and that the papers of this suit be placed amongst the files of ended causes and properly indexed.

Idem.

IXD. Forms in a Suit to Surcharge and Falsify an Account

72. Bill to Surcharge and Falsify the Settlement of a Personal Representative.

In the ...... Court of the ...... of ......, ...:

A. B. v. C. D. in his own right and as Administrator of the Estate of E. B., deceased.	In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., humbly complaining, showeth unto the said court:

(1) That on the .... day of ......, 19.., E. B., the father of this plaintiff departed this life intestate; that subsequently

thereto the defendant, C. D., was appointed and qualified as his administrator.

(2) That there came into the hands of the said C. D. a large amount of personal estate, aggregating the sum of ...... dollars; that the said C. D. returned an inventory of the estate of the said E. B. to the Clerk's Office of the ...... Court of the ...... of ......, an attested copy of which is herewith filed, marked exhibit "A" and made part of this bill.

(3) That the said inventory shows only the sum of $5,000.00 as having come into the hands of the said C. D. as such administrator, when, in truth and in fact, there came into the hands of the said C. D., as the property of the estate of the said E. B., not included in the said inventory ten unregistered Second Liberty Loan Bonds of the United States of a par value of One Thousand Dollars each;

(4) That on the .... day of ......, 19.., the said C. D. settled his accounts before a commissioner, which settlement was returned to the court and confirmed, as will more fully appear from said settlement and report thereof, attested copies of which are herewith filed, marked exhibits "B" and "C" respectively and made part of this bill; that on the .... day of ......, 19.., the said C. D. made another settlement as such administrator before the same commissioner, which settlement was reported to and confirmed by the said ...... court, as will more fully and at large appear from the said last settlement and the report thereof, attested copies of which are herewith filed, marked as exhibit "B" and "E" respectfully, and made part of this bill;

(5) That in the said last settlement the said C. D. brings out the estate of the said E. B. in debt to him, the said C. D., in the sum of ...... dollars, when, in truth and in fact, had the said C. D. charged himself with the said Liberty Loan bonds, which he should have done, there would still be in his hands, as belonging to the said estate, the sum of ...... dollars;

(6) That the said C. D. is credited with the following items: (*here specify the same*) as having been paid by him on account of the said estate, which he, the said C. D. did not pay, and for

which he had no vouchers whatever, and which are wholly unsupported by any proof;

(7) That your orator is the sole heir-at-law and the only person interested in the accounts of the said C. D. as administrator aforesaid; that all the debts of the said C. D. have been paid, and that whatever may be in the hands of the said C. D. as such administrator should be paid over to your orator.

Your orator now prays that C. D., in his own right and as administrator of the estate of E. B., deceased, may be made the party defendant to this bill and be required to answer the same (*here insert if necessary*: but answer under oath is hereby waived); that proper process issue; that the accounts of the said C. D. as administrator of the estate of E. B., deceased, be surcharged and falsified as to the matters hereinbefore alleged; that this cause may be referred to a commissioner in chancery to take and report an account as to the particular matters hereinbefore specified and set forth; that your orator may have a decree for any balance in the hands of the said C. D. as such administrator, and grant unto your orator such other, further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

Text page 265; Va. Code, § 5429; Barnes' W. Va. Code, Ch. 87, § 22.

73. Decree Referring Cause to a Commissioner in a Suit to Surcharge and Falsify the Settlement of the Accounts of a Fiduciary.

In the ...... Court of the ...... of ......, ...:

A. B. v. C. D. in his own right and as Administrator of the Estate of E. B., deceased.	In Chancery.	Decree.

This cause came on to be heard this .... day of ......, 19.., upon the bill of complaint and exhibits filed therewith; upon the answer of the defendant and general replication to the said answer; (*here insert any other pleadings*) and was argued by counsel. Upon consideration whereof the court is of opinion to and doth hereby refer this cause to J. M. S., one of the commissioners in chancery of this court, to take an account and report upon the following matters:

First, any and all omissions committed and made by C. D., as administrator of the estate of E. B., deceased, in his settlement of the estate of the said decedent, treating such settlement as *prima facie* correct as to all matters embodied in it, except such as may be specifically pointed out and proved to be erroneous;

Second, whether the specific items mentioned in the plaintiff's bill, as personal property belonging to the estate of E. B., deceased, did belong to said estate, if so, are such items properly chargeable to the said C. D., as the personal representative;

Third, (*here set out any other matter to be reported upon, until the scope of the inquiry is covered*).

But before proceeding to take said account said commissioner shall give notice to the parties hereto of the time and place of taking said account by personal service of such notice on the parties or their counsel.

Idem. See XXX for additional forms.

IXE. Forms in a Suit to Set up Lost Instruments

74. Bill in a Suit upon a Lost Instrument.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., humbly complaining, showeth unto the court:

(1) That on the .... day of ......, 19.., the defendant, C. D., executed to him his two several bonds bearing date on the day and year last aforesaid, each in the sum of $......, payable

in one and two years, respectively, with interest thereon from date; that these two bonds were given for money which your orator loaned the said C. D.;

(2) Your orator further says that there has been nothing whatever paid upon the said bonds, and that they are now due and payable; that he cannot produce the said bonds although he has made diligent search for them without success; and your orator therefore alleges that the said bonds are either lost or destroyed;

(3) Your orator says that the said C. D. declines to pay the said bonds, and insists that he will not do so unless your orator can produce the said notes and surrender them to the said defendant, but your orator says that he cannot surrender the said bonds at this time because he is unable to find and produce them;

(4) Your orator further says that he is willing to indemnify the said defendant against all damage or loss by reason of your orator's being unable to produce and surrender the said bonds, and will give such indemnity at any time the same may be required by the court, and will give such surety in the execution of the bond of indemnity as the court in its discretion may require.

IN CONSIDERATION WHEREOF and forasmuch as your orator is remediless, save in a court of equity, he prays that the said C. D. may be made a party defendant to this bill and be required to answer the same; that he may have a decree setting up and establishing said bonds as a valid evidence of indebtedness of the said defendant; that he may have a decree against the said defendant for the payment of said bonds for their principal and interest. Your orator asks such other, further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.
By Counsel.

Q. M., Counsel.

(*Append affidavit as in Form No. 32.*)

Text page 274; Va. Code, § 6242; Barnes' W. Va. Code, Ch. 130, § 14.

75. Decree Setting up Lost Instrument and Directing Payment Thereof.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on to be heard this .... day of ......, 19.., upon (*here set out all pleadings filed in cause*); and was argued by counsel. And it appearing to the court from competent and satisfactory proof herein that the defendant, C. D., did make and deliver to the said plaintiff, A. B., his two several bonds bearing date on the .... day of ......, 19.., payable to the order of the said A. B. in one and two years after the date thereof, each for the sum of five hundred dollars with interest thereon from date; and it appearing further to the court that at the time of the institution of this suit said plaintiff was still the owner of the said bonds and that the same were then due and unpaid, and that said bonds and their interest now amount to the sum of $......; the court is of opinion that the plaintiff ought to recover from the said C. D. said sum of ...... dollars, with legal interest thereon until paid. And it further appearing to the court that at the time this suit was instituted the said bonds were and still are lost, and that when the same were lost that said A. B. was the owner and holder thereof, the said A. B. being required so to do, executes and files in the papers of this cause a bond payable to the said C. D. in the penalty of ...... dollars, with E. F. and F. H. as sureties, conditioned to save harmless and indemnify the said C. D. against all claims by any other person on account of said bonds, and against all costs and expenses by reason of such claims, which bond, being found to be in a sufficient penalty, in proper form, and with sufficient security, is now here in open court approved.

It is therefore, adjudged, ordered and decreed that said plaintiff do recover of and from the said defendant, C. D., the said sum of ...... dollars with legal interest thereon until paid, and his costs in and about the prosecution of his suit in this behalf expended.

Idem.

76. Decree Setting up a Lost Will.

(Title of Cause.)

This cause coming on to be finally heard this .... day of ......, 19.., upon the former orders and decrees herein made and entered; upon the process duly served upon the home defendants, and the order of publication duly executed as to the non-resident defendants and the unknown heirs at law of E. T., deceased; upon the proper orders and proceedings duly entered and had at rules; upon the bill and amended bill, the separate answer of A. M., and the general replication thereto, the joint and several answers of E. S. and J. S., her husband, C. W. and J. B. and the plaintiffs' replication in writing thereto; upon the separate answer of J. M. and general replication thereto; upon the joint and several rejoinder of E. S. and J. S., her husband, C. W. and J. B. to the replication in writing of the plaintiffs; upon the bill taken for confessed and set for hearing as to all home defendants failing to plead, answer or demur to the bill or amended bill of complainants; upon the depositions taken and filed in the cause; upon the plaintiffs' suggestion of the death of the defendant, J. M. S., and, they asking that the suit abate as to him, the said suit is hereby abated as to him, the said J. M. S.; and neither the plaintiffs nor defendants asking an issue to be directed in this cause, but submitting the decision of all matters arising upon the record to the court, after argument of counsel for both plaintiffs and defendants and a careful examination of the papers in the cause, the court is of the opinion and doth so adjudge, order and decree that in the year 19.., as set out in the plaintiff's original bill, the decedent, E. T., being of sound mind and memory, did make and publish his last will and testament in writing, to which he subscribed his name as and for his last will and testament in the presence of R. S. and W. D., the said R. S. and W. D., also subscribing their names to the said writing as witnesses thereto at the request of the said E. T., deceased, in his (the testator's) presence, and they, the said witnesses, subscribing their names thereto as witnesses in the presence of each other, and that said last will and testament was in existence at the time of the death of the said testator.

And the court doth further find that since the death of the said testator, said E. T., that said last will and testament so made in writing and published by him as hereinbefore ascertained and adjudged, has been destroyed by burning, and that its contents can only be established by a copy thereof in the possession of R. B., an attorney at law, who drafted the original will, and the plaintiffs so desiring it, the court doth find from the pleading and proofs in this cause, and doth so adjudge, order and decree, that the said will was as follows: (*here insert the will*).

(*In Virginia insert here*: And the court doth adjudge, order and decree that a certified copy of this decree be recorded in the correct will book of this court as and for the last will and testament of E. T., deceased; *or in W. Va. insert*: And the court doth adjudge, order and decree that a certified copy of this decree be made out by the clerk of this court and by him transmitted to the clerk of the ...... court of this ...... to be by him the said clerk of the said court, duly recorded as and for the last will and testament of the said E. T., deceased) with leave to the proper person to qualify thereunder as the personal representative of said testator. And it is further adjudged, ordered and decreed that the plaintiffs do recover of the defendants their costs in this behalf expended. (*In W. Va. add*: including a statute fee of $......) and leave is hereby given to sue out execution therefor if they or any of them may so elect.

Idem.

IXF. Forms in Suits for Specific Performance

77a. Bill for Specific Performance by Vendor against Vendee.

In the ...... Court of the ...... of ......, ...:

A. A.
v. } In Chancery. Bill.
A. B.

To the Hon. ......, Judge of the said Court:

Your complainant, A. A. respectfully represents:

(1) That on the .... day of ......, 19.., he was seised and

possessed in fee simple, free of encumbrances of any sort, by a perfect title, of all that certain tract of land, with the buildings thereon, lying and being in the county of ......, and described as follows: (*here describe the property*); and,

(2) That on the said .... day of ......, 19.., he entered into a contract with one A. B. to sell the said A. B. the said tract of land with the buildings thereon, situated as aforesaid, for the sum of ...... dollars, which said contract is herewith filed, marked "Exhibit A," and made a part of this bill; and,

(3) That by said contract it was agreed by and between the said A. B. and your complainant that, on the .... day of ......, 19.., the said A. B. would pay to your complainant the sum of ...... dollars, part of the aforesaid sum of ...... dollars, and that on the said .... day of ......, 19.., your complainant would execute and deliver to the said A. B. a good and sufficient deed, with general warranty, to the said property in fee simple; and,

(4) That it was further agreed by and between the said parties that the residue of the purchase money would be paid as follows: ...... dollars on the .... day of ......, 19.., with interest from the .... day of ......, 19.., and ...... dollars on the .... day of ......, 19.., with interest from the .... day of ......, 19..; and that the said A. B. would execute and deliver to your complainant on the aforesaid .... day of ......, 19.., his two several bonds for the two said sums of money, payable with interest as aforesaid, and at the same time execute a good and sufficient deed of trust on the said property to secure the payment of the same; and,

(5) That on the said .... day of ......, 19.., your complainant tendered to the said A. B. full and complete possession of the said property, and at the same time tendered and offered to deliver him a good and sufficient deed, with general warranty, to the said property in fee simple; that the said deed was duly signed, sealed and acknowledged by your complainant and his wife; and that the said A. B. then and there refused to accept the said deed, or to pay the said sum of ...... dollars, which he had agreed that he would pay at that time, or any part thereof, or to execute his two several bonds for the two said sums of ......

and ......, with interest as aforesaid, or to execute his deed of trust as he had agreed, or to take possession of the said property; and your complainant further says that the said A. B. has at all times since refused to accept the said deed, or to pay the said sum of ...... dollars, or any part thereof, or to execute his two several bonds for the two said sums of ...... and ......, with interest as aforesaid, or to execute his deed of trust as he had agreed, or to take possession of the said property;

In consideration whereof, and forasmuch as your complainant is remediless in the premises save in a court of equity, your complainant herewith tenders a good and sufficient deed, with general warranty, to the said property in fee simple, duly signed, sealed, and acknowledge by your complainant and his wife, and hereby offers to fully perform all the provisions of his said contract with the said A. B.: wherefore, he prays that the said A. B. may be compelled on his part to perform and comply with the provisions of the said contract; that the said A. B. may be compelled to accept the deed tendered to him, and to pay the sum of money, and execute the bonds and deed of trust as provided for in said contract; that the said A. B. may be made defendant to this bill, and required, but not on his oath, to answer the same, the oath being hereby waived; and that your complainant may have all such further and other and general relief in the premises as the nature of his case may require, or to equity shall seem meet.

A. A., Complainant.

J. C., Counsel.

77b. Bill for Specific Performance by Vendee against Vendor.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That on the .... day of ......, 19.., one C. D. being,

or pretending to be, seised and possessed in fee simple of the following described real property, situate laying and being in the county of ...... in the state of ......, to-wit: (*here describe the premises*) and being so seised, on that day, entered into a written agreement with your orator, for the sale of the same, which said agreement was signed by the said C. D. and your orator, and duly delivered to your orator, and by which the said C. D. covenanted and agreed for himself, his heirs, executors and administrators, for and in consideration of the sum of ...... dollars, to be paid as hereinafter mentioned, well and truly, to convey by a good and sufficient warranty deed, in fee simple, to your orator, his heirs or assigns, the tract or parcel of land above described; and, in consideration whereof, your orator covenanted and agreed to pay the said C. D., his heirs, executors or administrators, the sum of ...... dollars, in manner following, to-wit: (*here state the manner of payments, as in agreement*); as by the said agreement, ready to be produced in court, a copy of which is hereto attached and filed, marked "Exhibit A" and made part of this bill, will more fully appear;

(2) Your orator further represents that he had always been willing and ready to comply with the terms of said agreement, on his part to be performed; that on the .... day of ......, 19.., he applied to the said C. D., and offered to pay him the sum of ...... dollars, being the balance then due the said C. D. under the said agreement, on his delivering to your orator a sufficient warranty deed for the said premises, according to the said agreement, yet the said C. D. refused, and still refuses, to comply with the said agreement on his part; although your orator is, and always has been, ready to pay the said sum of ...... dollars, and to fully perform his part of the said agreement whenever the said C. D. will make and deliver to him a good and sufficient deed for the premises aforesaid.

Your orator therefore prays that the said C. D. may be made a party defendant to this bill and be required to answer the same but answer under oath is hereby waived; that the said defendant may be decreed specifically to perform the said agreement entered into with your orator as aforesaid, and to make a good and sufficient deed to your orator for the said described premises; your orator being ready and willing, and is hereby offering specifically to perform the said agreement on his part, and upon the defendant's making out a good and sufficient title to the said premises and executing a proper conveyance therefor to your orator, pursuant to the terms of said agreement, to pay to the defendant the residue of the purchase money; and that your orator may have such other and further relief as equity may require, and to your honor may seem meet, and as in duty bound he will ever pray, etc.

A. B.
By Counsel.

Q. M., Counsel.

78a. Decree for Specific Performance against Vendee Striking out One Plea in Abatement, Making up Issue on Another, and Overruling Plea in Abatement, upon a Submission of the Issue to the Court.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on this .... day of ...... to be heard upon the process duly executed upon the defendant upon the plaintiff's bill with its exhibits, regularly filed at rules, and the proceeding regularly had thereon at rules; upon the special pleas in writing filed by the defendant at rules, marked respectively, Nos. 1 and 2; upon the motion of the plaintiff to strike out plea No. 1 from the record and files of this cause; upon the general replication of the plaintiff to said plea No. 2; (*in W. Va. insert*, upon the waiver in writing of a jury for the trial of the issue made upon the replication to said special plea No. 2, and the submission of the trial of said issue by like agreement to the court in lieu of a jury); upon the answer of the defendant to said bill and a general replication to said answer; upon the depositions taken and filed in the cause on behalf of the plaintiff and defendant; and upon the argument of counsel. Upon consideration of all which the court is of opinion to and doth hereby sustain plaintiff's said motion to strike said plea No. 1 from the record and files of this cause. It is, therefore, adjudged, ordered and decreed that said special plea No. 1 be and the same is hereby stricken from the record and files of this cause. And the court is further of the opinion and doth find for the plaintiff on the issue made by the plaintiff's general replication to said plea No. 2, filed in this cause as aforesaid. The court is, therefore, of opinion, and doth so adjudge, order and decree, that the allegations in said plea No. 2 contained, are, in fact, not true; and this court is further of opinion, and doth so adjudge, order and decree, that said special plea No. 2, be and the same is hereby overruled, and that it is of opinion, and doth so adjudge, order and decree that this court hath jurisdiction to hear and determine this cause. And it appearing from the pleadings and proofs in this cause that the defendant, C. D., by his agent duly authorize thereto, entered into a contract with the plaintiff, A. B., whereby he did agree to purchase from the said A. B. the lands in the bill and proceedings mentioned and described, at the contract price of ...... dollars; and it appearing from said bill that the said C. D. has declined and refused, and still declines and refuses, to perform his part of said agreement by taking the land paying therefor the sum of ...... dollars, and it further appearing to the court that the said agreement ought to be specifically enforced, it is, therefore, adjudged, ordered and decreed that said agreement between said plaintiff and defendant whereby said plaintiff did agree to sell to the defendant the land in the bill and proceedings mentioned and described, containing .... acres, and which the said defendant agreed to purchase from the said plaintiff at the sum of ...... dollars, be and the same is hereby, enforced.

It is, therefore, adjudged, ordered and decreed that the defendant do pay to the plaintiff the said sum of ...... dollars, with legal interest thereon from this date until paid, and the costs of this suit. And it is further adjudged, ordered and decreed that, upon the payment of the said sum of ...... dollars, and interest thereon, and costs of this suit, the said A. B. do make, acknowledge and deliver to the said C. D. a deed with covenants of general warranty conveying to him, the said C. D., the title in and to the said tract of land containing .... acres, and fully set out and described in the plaintiff's said bill; and in default thereof, then N. G. is hereby appointed and empowered and directed to make, acknowledge and deliver said deed for and on behalf of the said A. B. to the said C. D., conveying to him, the said C. D., the said land, with covenants of general warranty, for which said N. G. shall be allowed the sum of ...... dollars, to be paid by the said A. B., and to be taxed as costs against said A. B. And thereupon said A. B. asked leave to file such deed at this time in the papers of this cause, duly executed and acknowledged by said A. B., and his wife, and bearing date on the .... day of ......, 19.., to be delivered to the said C. D. by the clerk of this court upon the payment by the said C. D. of the said sum of .... dollars, with the interest accrued thereon, and the costs aforesaid; which deed is hereby accordingly filed among the papers of this cause, to be delivered to the said C. D. by the clerk of this court upon the payment to the said A. B. of the said money, interest and costs aforesaid, which payment shall be evidenced by the receipt of the said A. B. of the payment of the said money, or his release of this decree duly signed and acknowledged.

78b. Decree for Specific Performance against Vendor.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on this .... day of ......, 19.., to be heard upon the complainant's bill and the exhibits filed therewith; the respondent's answer to said bill; the complainant's replication to said answer; and the depositions taken and filed on behalf of the complainant and the respondent; and was argued by counsel.

On consideration whereof, the court doth adjudge, order, and decree that upon the payment of the sum of ...... dollars by A. B., the complainant, to C. D., the respondent, the said respondent shall sign, seal, acknowledge, and deliver a good and sufficient deed to the said complainant, with general warranty and the usual covenants of title, conveying to the said complainant the land mentioned in his bill, according to the metes and bounds as set out in the agreement between the said complainant and the said respondent, which is dated on the .... day of ......, 19.., and filed as "Exhibit A" with said bill.

And it is ordered that the said respondent do pay unto the said complainant his costs by him in this behalf expended, and leave is given the said complainant to apply to this court for such other relief in the premises as may be necessary.

IXG. Forms in Suits for Cancellation and Rescission

79a. Bill for the Cancellation of a Written Instrument Because of Infancy.

A. B.
v. } In Chancery. Bill.
C. D.

In the ...... Court of the ...... of ......, ...:

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That on the .... day of ......, 19.., your orator's father, D. B., was the owner in fee simple of a tract of .... acres of land situate in ...... District, ... County, ... which was conveyed to him by L. M. by deed bearing date on the .... day of ......, 19.., and duly recorded in the office of the clerk of the ...... Court of the ...... of ......, in Deed Book No. ...., at page ...., an attested copy of which is herewith filed, marked "Exhibit A" and made a part of this bill;

(2) That on the .... day of ......, 19.., D. B., the father of A. B., the plaintiff, so being the owner of said land by virtue of said deed, dated on the .... day of ......, 19.., made and published his last will and testament; that thereafter, on the .... day of 19.., the said D. B. departed this life, and his said last will and testament was duly admitted to probate in the office of the clerk of the ...... Court of the ...... of ......, attested copies of which will and order of probate are filed herewith, marked Exhibits "B" and "C" respectively and made part of this bill;

(3) This plaintiff, further complaining, says, that by said last will and testament the said D. B. devised to this plaintiff the tract of .... acres of land in said "Exhibit A" mentioned and described.

(4) This plaintiff further says that on the .... day of ......, 19.., the said plaintiff, then being the owner of said land in fee, sold and conveyed the same to the defendant, C. D., for the consideration of five hundred dollars cash in hand paid to this plaintiff, and on that day the said plaintiff signed and delivered a deed to the said defendant, C. D., for the said land, which was duly recorded in the clerk's office of the said ...... of ......, an attested copy of which last named deed is herewith filed, marked "Exhibit D" and made part of this bill;

(5) Plaintiff further complains and says that on the .... day of ......, 19.., this plaintiff was an infant under twenty-one years of age, to-wit, of the age of ...... years; that plaintiff has now attained his majority, having arrived at the age of twenty-one years on the ....day of ......, 19..;

(6) This plaintiff further complaining, says that since attaining to his majority he desires to, and does, disaffirm the said act and deed selling and conveying the said land to the said defendant, and so informed the said defendant and requested the said defendant to reconvey the said land to this plaintiff, which the said defendant declined and refused to do, and still declines and refuses to do, unless this plaintiff shall pay to the said defendant the said sum of five hundred dollars, purchase money as aforesaid, with its interest thereon from the day of its receipt by this plaintiff as aforesaid; but this plaintiff avers that he has spent said five hundred dollars, and that there is no sum thereof remaining in the hands of this plaintiff, and that this plaintiff is unable to repay to the said defendant the said sum of five hundred dollars with its interest thereon, or any part thereof.

Plaintiff therefore prays that the said C. D. may be made the party defendant to this bill and required to answer the same, but not on oath, the oath being waived; that proper process issue; that the said deed may be cancelled, declared null and void, and held for naught; that the said defendant may also be required in addition thereto, in order to preserve the chain of title as matter of record in the office of the clerk of the ...... court of the ...... of ......, to reconvey the said land to this plaintiff, and grant unto this plaintiff such other and further relief as the court may see fit to grant, and as in duty bound he will ever pray, etc.

A. B.
By Counsel.

Q. M., Counsel.

79b. Bill for the Cancellation of a Written Instrument Because of the Fiduciary Relationship of the Parties.

In the ...... Court of the ...... of ......, ...:

A. W.
v. } In Chancery. Bill.
A. R. and L. D.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That on the .... day of ......, 19.., B. W. departed this life, after having first made his last will and testament, which was afterwards duly probated in the office of the clerk of the ...... court of the ...... of ......, attested copies of which will and order admitting the same to probate, marked respectively "Exhibit A" and "Exhibit B" are herewith filed and made part of this bill;

(2) That by the said will G. J. was appointed executor thereof and qualified as such;

(3) That one X. Y. brought suit in chancery against G. J., executor as aforesaid, and others, in the ...... court of the ...... of ......, to subject certain lands of the estate of the said B. W. to sale for the payment of his debts; and that by a decree duly entered in said suit the defendant, A. R., was appointed special commissioner to sell said land; that on the .... day of ......, 19.., the said A. R., as said special commissioner, sold a tract of ...... acres of said land at public auction, as required by said decree, and that one L. D. became the purchaser thereof at the price of ...... dollars; that on the

.... day of ......, 19.., said sale was confirmed and by a subsequent decree said commissioner was directed to convey the said land to the purchaser; that the said A. R. as such special commissioner, did, by deed dated the .... day of ......, 19.., convey the said land to the said defendant, L. D.; and by deed of same date the said L. D. and wife conveyed the same to the said A. R., all of which more fully and at large appear from said deeds themselves which have been duly admitted to record in the office of the clerk of the ...... court of the ...... of ......, in Deed Book No. .... at pages ...... respectively, attested copies of which are herewith filed, marked respectively "Exhibit C" and "Exhibit D," and made part of this bill;

(4) That the sale of said .... acres of land by said A. R. as commissioner to said L. D. was fraudulent and void; that in fact the said A. R. was the real purchaser of the said land, the said L. D. having purchased it under a secret agreement and understanding with the said A. R. that the latter was to become the owner of it; that said A. R. has enjoyed the rents and profits of the said land for nearly ...... years, and sold therefrom a large quantity of valuable timber worth ...... dollars, and appropriated the same to his own use; that the said land is worth now not less than the sum of ...... dollars, and will sell for that at any time;

(5) That he is the sole devisee and distributee under the will of this said B. W., and is interested as such in the sale of said land;

(6) Your orator is advised and so avers that the said A. R. in his fiduciary capacity of special commissioner, could not become the purchaser either directly or indirectly of said land sold by him as such special commissioner as aforesaid.

Your orator therefore prays that L. D. and A. R. be made parties defendant to this bill and be required to answer the same (*or waive oath if necessary*); that proper process issue; that the said sale of lands by the said A. R. and the purchase thereof by the said L. D. as aforesaid may be set aside and held for naught; that the deed from the said L. D. and wife to the said A. R. may also be set aside and held for naught; that there may be an accounting taken of the rents, issues and profits derived from the said real estate by the said A. R.; that the said A. R. may have credit thereon for the said purchase money with its interest, together with any and all taxes paid by him on the said real estate; that a decree for the balance may be entered in favor of your orator against the said A. R., and grant unto your orator such other further and general relief as the court may see fit to grant, and as in duty bound he will ever pray, etc.

A. W.

Q. M., Counsel.

79c. Bill to Recover Back Purchase Money on a Deficiency in the Quantity of Land Sold.

A. B.
v. } In Chancery. Bill.
C. D.

State of ......,

County of ......, to-wit:

In the ...... Court of the ...... of ....:

To the Hon. ......, Judge of the said Court:

Your orator, A. B., complaining showeth unto the court:

(1) That the defendant, C. D., on or about the ...... day of ......, 19.., in consideration that the plaintiff would buy of him, the said defendant, a farm of land, situate in the District of ......, County of ......, State of ......, and pay unto him, the said defendant, the sum of ...... dollars as the purchase price of said land, falsely and fraudulently represented and stated to this plaintiff that the said farm contained ...... acres of land;

(2) That your orator paid the said sum of ...... dollars to the said defendant as the purchase price of said land, and the said defendant conveyed the same to this plaintiff by deed with covenants of general warranty, all of which will more fully and at large appear by reference to the said deed itself, an attested copy of which is herewith filed marked Exhibit "A" and made part of this bill;

(3) Your orator further showeth unto the court that he relied upon said representations and statements of the defendant, and did purchase and pay for the said farm at the price above specified, relying on said representations and allegations and believing them to be true; but your orator avers that said representations and allegations were and are untrue, that said farm contains only about ...... acres of land, and that plaintiff ought to recover from the said defendant the sum of ...... dollars, being the difference in the amount of the purchase money actually paid by this plaintiff to the said defendant, and that which this plaintiff should have paid by reason of the deficiency in the quantity of land in the farm aforesaid, which sum of ...... dollars the said defendant declines and refuses to pay;

Your orator therefore prays that the said C. D. may be made a party defendant to this bill and required to answer the same; (*waive oath if necessary*) and that said plaintiff may have a decree for the payment of the said sum of ...... dollars, and that he may have such other, further and general relief as to equity may seem meet and as in duty bound he will ever pray, etc.

A. B.
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

80a. Decree Directing Cancellation or Rescission of an Instrument on the Ground of Infancy and Removing Cloud from Title.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D., et als.
} In Chancery. Decree.

This cause came on this day to be heard upon the process duly served upon the defendants; upon the bill regularly filed at rules, the decree *nisi* thereon, and taken for confessed and set for hearing at rules by the plaintiff as to the defendant, C. D., upon the separate answer of G. H., as administrator of J. K., deceased, and general replication thereto; upon the answer of M. N., guardian *ad litem* of the infant defendants, L. K. and P. K., and general replication thereto; upon the depositions on behalf of the plaintiff taken and filed in the cause; and was argued by counsel.

Upon consideration of all which the court is of opinion and doth so adjudge, order and decree that the deed (*or other instrument as the case may be*) in the bill and proceedings mentioned and described, bearing date on the .... day of 19.., executed by the plaintiff, A. B., to the defendant, C. D., conveying the real estate therein described, signed by the said A. D. to said C. D., was made and delivered by the said A. B. to the said C. D., while the said A. B. was an infant under the age of twenty-one years; and it further appearing to the court that the said A. B. received as the consideration of said deed the sum of ...... dollars, but which he has expended, so that nothing thereof now remains in the possession or ownership of the said A. B., it is therefore adjudged, ordered and decreed that the said deed bearing date on the .... day of ......, 19.., executed by said A. B. to the said C. D. conveying to him, the said C. D., ... acres of land, be and the same is hereby cancelled and annulled and to be taken and treated as if the said deed had not been executed.

And as a further assurance of title to the said land in said deed described, and to remove the cloud created upon such title by said deed, it is further adjudged, ordered and decreed that the said C. D. do execute, acknowledge and deliver for record a quit-claim deed to said land in said deed described within .... days from the adjournment of this court, and in default thereof, that such quit-claim deed be executed, acknowledged and delivered for record by E. F. who is hereby appointed a special commissioner for that purpose, and hereby duly authorized and empowered thereunto, for which the said E. F. shall be allowed the sum of ...... dollars to be taxed as a part of the costs of this suit.

And it is further adjudged, ordered and decreed that the said C. D. do pay unto said A. B., his costs in and about the prosecution of his suit in this behalf expended, (*add in West Virginia,* which shall include a statute fee of ...... dollars.)

Idem.

80b. Decree Directing Cancellation or Rescission of a Writing Because of the Plaintiff's Insanity.

(*After the style of the suit and proper recitals, proceed as follows*):

And it appearing to the court, that at the time the contract in the bill and proceedings in this cause mentioned and described, between the plaintiff, A. B., and the defendant, C. D., bearing date on the .... day of ......, 19.., was executed, that the said plaintiff was insane and therefore incapable of entering into such contract, it is therefore adjudged, ordered and decreed that such contract between the said A. B. and C. D., bearing date as aforesaid, be and the said is hereby set aside and declared to be null and void, and the said C. D. is hereby directed and required to deliver up said contract to the Clerk of the Court to be by him cancelled.

And it is further adjudged, ordered and decreed that the said defendant do pay unto the said plaintiff his costs by him about the prosecution of his suit in this behalf expended and incurred.

Idem.

80c. Decree Directing the Cancellation or Rescission of an Instrument on the Ground of Fraud.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on this .... day of ......, 19.., to be heard upon the process duly served upon the defendants; upon the bill regularly filed at rules, the decree *nisi* thereon, and taken for confessed and set for hearing at rules by the plaintiff as to the defendant, C. D., upon the separate answer of G. H. as administrator of J. K., deceased, and general replication thereto; upon the answer of M. N., guardian *ad litem* of the infant defendants, L. K. and P. K., and the answer of the said infant defendants by their guardian ad litem, and general replication thereto; upon the depositions on behalf of the plaintiff taken and filed in the cause; and was argued by counsel.

Upon consideration of which the court is of opinion, and doth so adjudge, order and decree, that the contract (*or* note, *or* deed, *or whatever the writing may be*), in the bill and proceedings mentioned and described, bearing date on the .... day of ......, 19.., signed by (*here name the party or parties*) was obtained and procured to be made by misrepresentation and fraud, and ought to be cancelled and rescinded; and it further appearing to the court that the plaintiff, A. B., has paid into this court the sum of ...... dollars, the amount received by said A. B. under said contract, and which is now in the hands of the general receiver of this court as the money and property of the defendant, C. D., and which the said receiver is ready to pay over to the said C. D. It is therefore adjudged, ordered and decreed that the said contract bearing date and signed as aforesaid be and the same is hereby cancelled and rescinded and held for naught, and to have no more force or effect than if the same had never been entered into by the parties who signed the same. And it is further adjudged, ordered and decreed that L. K., the general receiver of this court, do at once, pay unto said defendant, C. D., the said sum of ...... dollars.

And it is further adjudged, ordered and decreed that the said C. D. do pay unto the said A. B. his costs in and about the prosecution of his suit in this behalf expended. (*add in W. Va.* which shall include a statute fee of ...... dollars).

Idem.

IXH. Forms in Suit to Wind up a Partnership

81. Bill for Settlement of Partnership Accounts.

In the ...... Court of the ...... of ......, ...:

L. M.
v. } In Chancery. Bill.
P. F.

To the Hon. ......, Judge of the said Court:

Your complainant, L. M., respectfully represents:

(1) That on or about the .... day of ......, 19.., your orator entered into articles of partnership with one P. F., of the ...... of ...... for the purpose of conducting the dry-goods business in the ...... aforesaid, under the name and style of P. F. & Company; a copy of said articles of partnership is herewith filed, marked "Exhibit A," as a part of this bill.

(2) That by the express terms of said partnership each partner is required to devote his whole time and attention to the business of the partnership, yet the said P. F. has, from the beginning of the partnership business, altogether neglected, and still neglects, to give any attention to the business of the firm, but leaves the business of the partnership entirely to the care and management of your orator.

(3) That the said P. F. has, at different times, collected large sums of money from the debtors of the firm, for which no entries appear on the books of the firm, and has applied the same to his own individual use; and has refused to pay just debts due by the firm, although they were contracted by himself in the name of the firm.

(4) That there are a large number of debts due to the firm that are in the course of collection in suits in courts, and your orator has reason to believe and to fear that the said P. F. will possess himself of the money so collected, or portions of it, without accounting to your orator for it, and will fraudulently use it outside of the partnership business for his individual profit. The said P. F., has already abstracted, by his fraudulent dealings with the funds of the firm, a great deal more than his share

in the partnership would have been, even if he had accounted for all the funds which have come into his hands in the ways mentioned.

Your orator therefore prays that the said P. F. be made a party defendant to this bill and required to answer the matters and things hereinbefore stated as fully and particularly as if he were specially interrogated with reference thereto; that proper process issue; that a receiver may be appointed to take charge of the partnership books and papers of account, and the goods and effects, and to collect the debts due to the firm, and to preserve or dispose of the same under the direction of this court; that the said P. F. may, by injunction, be restrained from selling or disposing of or retaining from the receiver appointed as aforesaid any of the goods and effects, of the partnership or collecting any debts due thereto or negotiating any bill or note, or contracting any debt whatsoever on account thereof, or intermeddling in any other manner with the business of the firm; that said partnership may be dissolved; and that your orator may have such other, further and general relief as his case may require, and as in duty bound he will ever pray, etc.

L. M.
By Counsel.

Q. M., Counsel.

(*Append affidavit as in Form No. 32.*)

Idem.

82. Decree for Settlement of Partnership Accounts.

In the ...... Court of the ......of ......, ...:

L. M.
v.
P. F.
} In Chancery. Decree.

This cause came on this .... day of ......, 19.., to be heard upon the complainant's bill and the exhibits filed therewith; the respondent's answer to said bill; the complainant's replication to said answer; and the depositions taken and filed on behalf of the complainant and the respondent; and was argued by counsel.

On consideration whereof, the court doth adjudge, order, and decree that P. F., the respondent, do render an account of his dealings in connection with, and of the status and the matters concerning, the partnership in the said bill mentioned, before one of the commissioners of this court, who is directed to examine, state and settle the same, and make report thereof, with any matters specially stated deemed pertinent by himself, or which may be required by any person interested to be so stated. But before proceedings with the execution of this decree the said commissioner shall give both parties ...... days notice in writing of his intention so to proceed.

Idem.

83. Final Decree for Dissolution of Partnership and Confirming Report Made in the Cause.

In the ...... Court of the ...... of ......, ...:

L. M.
v.
P. F. } In Chancery. Final Decree.

This cause having come on to be heard upon the bill of complaint herein, the answer of the defendant thereto, the replication of the complainant to such answer, and the report of the master in chancery of this court, to whom this cause was heretofore referred to take the proofs of the matters in issue in said cause, and to state an account of the partnership dealings between said parties, which said report is hereby approved and confirmed, and having been argued by counsel for the respective parties; and the court being fully advised in the premises, on consideration thereof, doth find: that the allegations of said bill are substantially true as therein stated; and that the equity of this cause is with the complainant; and that, etc., (*here insert any other matter found by the court*); and that, upon the statement of the account between the said parties, in respect to their partnership dealings, there is now due from the defendant to the complainant the sum of ...... dollars.

It is therefore adjudged, ordered and decreed by the court that the copartnership heretofore existing between the said parties be, and the same is hereby, dissolved; that the defendant pay to the complainant within ...... days from this date, the said sum of ...... dollars, with lawful interest thereon from this date until paid, and also the costs of this suit to be taxed by the clerk of this court; and in default of such payment, that execution issue therefor.

Idem.

IXI

84. Affidavit to Require Plaintiff to Elect Whether He Will Proceed at Law or in Equity in One of Two Suits for the Same Cause, One Pending in Equity, the Other at Law.

State of ......,
...... of ......, ss:

A. B.
v.
C. D.
} In Chancery. Affidavit.

Pending in the ...... Court of the ...... of ......, State of ......:

Before the undersigned authority this day personally appeared C. D., who after being by me first duly sworn, says that he is the C. D., one of the defendants mentioned in the plaintiff's bill filed in the above entitled cause; and that the object of the above entitled suit is: (*here state object*).

This affiant further says that the said chancery suit against this defendant, as above stated, was brought on the .... day of ......, 19.., and is still pending in the said ...... Court undetermined.

This affiant further says that on the .... day of ......, 19.., the said A. B. named as plaintiff in the said suit in chancery, brought his action at law against this defendant (*here state same cause of action as in chancery suit*) and that the said action at law brought as aforesaid on the .... day of ......, 19.., is still pending in this court and undetermined.

Affiant further says that he is advised, and so states, that the plaintiff, A. B., cannot proceed in separate suits for the same cause of action in a court of equity, and especially can he not proceed for the same cause in a court of law and in a court of equity at one and the same time, upon one and the same cause of action, as he is seeking to do here in the said ...... court against this affiant as the sole defendant in the said lawsuit, and as the principal defendant in the said chancery suit.

Affiant therefore asks that a rule be awarded returnable within a reasonable time to be prescribed by the said court, and served upon the said plaintiff, A. B., to show cause, if any he can, why he should not be required to elect whether he will prosecute and proceed to a final determination in the said chancery suit or in the said action at law, at his option, and that he be required to make such election before this defendant shall be put to the cost and inconvenience of making defense or pleading to both or either of the said suits.

C. D.

Taken, sworn to and subscribed before me this the .... day of ......, 19..

....
Notary Public.

(*State when commission will expire.*)

Adapted from Carlin's Edition of Hogg's Equity Procedure.

85. Order Presenting Affidavit and Making Motion to Require Plaintiff to Elect Whether He Will Proceed at Law or in Equity in One of Two Suits for the Same Cause, One Pending in Equity, the Other at Law.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. } In Chancery. Order.

This day the defendant, C. D., presented to the court his affidavit setting forth the pendency of an action at law in this court by the said A. B. against him, the said C. D., as the sole defendant therein, (*state cause of action and identify it with same cause in chancery*) upon which the said chancery suit is brought, and for which a decree is sought to be obtained in the said chancery cause against the said C. D.; and hereupon the said C. D. moved the court for a rule against the said A. B. to be served on him, returnable at a time to be prescribed by the court, requiring him to show cause, if any he can, why he should not be required to elect as to which one of the said suits, whether the action at law, or this suit, he will prosecute, and in which he will proceed further.

Idem.

86. Instrument Making Election to Proceed in Equity When Action at Law and Suit in Equity Pending for Same Cause.

In the ...... Court of the ...... of ......, ...:

A. B.
v.　} In Chancery.
C. D.

In pursuance of an order of this court, made in this cause, and dated the .... day of ......, 19.., the complainant doth hereby make his election to proceed in this court.

Q. M., Counsel for Complainant.

Dated ....

IXJ

87. Bill to Have an Instrument in the Form of a Deed Declared to Be a Mortgage.

In the ...... Court of the ...... of ......, ...:

A. B.
v.　} In Chancery.　Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., respectfully represents unto your Honor:

(1) That on the .... day of ......, 19.., your orator being indebted unto one C. D., the defendant hereinafter named, in the sum of ...... dollars, to secure the same with interest

thereon at the rate of ...... per cent. per annum, to be paid on the .... day of ......, 19.., by an absolute deed of conveyance of that date, conveyed to the said C. D., in fee simple, that certain tract of land lying in the District of ......, in the County of ......, and State of ......, more fully described in said deed of conveyance, a copy of which is duly of record in the clerk's office of the ...... Court of the said ......, an attested copy of which is herewith filed, marked exhibit "A" and made part of this bill.

(2) That the said deed of conveyance, although appearing to be absolute on its face, was not intended to be such by your orator and the said C. D., but on the contrary thereof, it was expressly understood and agreed between them, that the same, and the said premises thereby conveyed, were to be held by the said C. D. simply and solely as a security for the payment of the said sum of money and interest as aforesaid; and that upon the payment of that sum and interest to the said C. D., the said C. D. would reconvey the said premises to your orator by an absolute deed;

(3) That he, your orator, has remained in the possession of said premises ever since the execution of said deed and is now in the possession thereof;

(4) That he has paid all the interest due on the said sum of ...... dollars, to the said C. D., from the date of the said deed until ......, when the said C. D., refused to receive further interest thereon from your orator; that your orator has always been and still is, ready to pay the said C. D., what is due to him for principal and interest on the said sum of money; and your orator well hoped that the said C. D. would have received the same, and that he would reconvey to your orator the said premises, as in justice and equity he ought to have done;

(5) But now so it is, may it please Your Honor, he, the said C. D., in order to deprive and defeat your orator of the benefit of redeeming said premises, does pretend and give out that your orator did not execute the said deed of conveyance to the said C. D., as a security for the repayment of the said sum of money, with interest as aforesaid, but does pretend that the said sum of ...... dollars was paid to your orator in consideration of the

absolute purchase of the said premises; and that the said deed was not intended between the parties thereto to be a mere security for the said sum of money, and interest as aforesaid; whereas, your orator charges the contrary of such pretenses to be the truth; and, upon the pretenses aforesaid, the said C. D. refuses to come to any manner of account with your orator, or to reconvey the said premises to him, although your orator has frequently, and in a friendly manner, applied to him for that purpose, and offered to pay him whatever, if anything, should be found to be due to the said C. D., upon an account being taken, with reference to the said transaction. All of which actings, doings and pretenses of the said C. D., are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator.

Your orator therefore prays that the said C. D., who is hereby made a party to this bill, may be required to make full and direct answer to the same; (*in Virginia insert,* but answer under oath is hereby waived); that proper process issue; that an account be taken as to the state of the accounts between your orator and the said defendant; that if anything be found due the said defendant upon said accounting your orator may be permitted, as he now offers, to pay the same; that the defendant may be compelled to reconvey the said premises to your orator by sufficient and proper deed of conveyance in fee; and that your orator may have such other further and general relief as equity may require, and to Your Honor shall seem meet, and as in duty bound he shall ever pray, etc.

A. B.
By Counsel.

Q. M., Counsel.
Idem.

88. Decree Declaring Deed to Be a Mortgage.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on to be heard this .... day of ......, 19.., upon the bill of complaint and exhibits filed therewith, upon the answer of the defendant and the plaintiff's general replication to said answer, upon the depositions duly taken and filed upon behalf of the plaintiff and defendant; and was argued by counsel.

And it appearing to the satisfaction of the court that the said conveyance bearing date on the .... day of ......, 19.., executed by the plaintiff to the defendant, a copy of which is filed as exhibit "A" with the plaintiff's said bill, and purporting to be a deed, was made, signed and delivered by the said plaintiff to the said defendant to secure to the said defendant, C. D., the sum of ...... dollars, and was designed and intended both by the said A. B. and the said C. D. to be a mortgage, securing said sum of ...... dollars, it is therefore adjudged, ordered and decreed that the said writing, purporting to be a deed, bearing date on the .... day of ......, 19.., as aforesaid, and executed by the said A. B. to the said C. D. be, and the same is hereby declared to be a mortgage, and that the said tract of land therein mentioned and described be regarded as so standing as a security for the said sum of ...... dollars due and payable by the said A. B. to the said C. D., which now amounts, including the interest to date, to the sum of ...... dollars. And it is further adjudged, ordered and decreed that the said sum of ...... dollars, principal and interest to date, constitutes a valid and subsisting lien upon the real estate embodied and described in the said writing bearing date as aforesaid. And it is further adjudged, ordered and decreed that upon the payment of the said sum of ...... dollars above named to the said C. D. by the said A. B. or someone for him, then the said C. D. shall make an apt and sufficient deed with covenants of general warranty, recovering the said land to the said A. B., and in default thereof that then R. R., who is hereby appointed a special commissioner for that purpose, shall make, acknowledge and deliver for record such deed for and on behalf and in the name of the said C. D., for which the said R. R. shall be allowed the sum of five dollars, to be taxed as part of the costs of this suit.

And it is further adjudged, ordered and decreed that unless the plaintiff, A. B., or someone for him, do pay to the defendant, C. D., the aforesaid sum, within ...... days from the rising of this court, then R. R., who is hereby appointed a special commissioner of the court for the purpose, shall sell the property aforesaid at public auction after (*Here insert time, place and terms of sale*); and after first paying the costs thereof, including the commissions allowed a special commissioner by statute he shall pay the debt due C. D., defendant, by A. B., plaintiff, principal and interest, and the residue he shall pay to A. B., and report his action hereunder to a future term of this court.

And it appearing that the plaintiff, A. B., is the party substantially prevailing herein, the defendant, C. D., shall pay the costs of this suit, excepting the costs of sale if sale shall be made.

Idem.

X. Amended and Supplemental Bills and Pleadings Thereafter

89. Amended or Supplemental Bill.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D., E. F.,
and G. H.

In Chancery.
Amended (*or* Supplemental) Bill.

To the Honorable ......, Judge of the said Court:

Your complainant, A. B., respectfully represents:

(1) That on the .... day of ......, 19.., he exhibited in this court his original bill of complaint against E. F. and G. H., wherein he set forth (*here set out the stating part of the bill*); and thereupon he prayed that (*here set out the prayer of the bill*). And the said E. F. and G. H. appeared and answered the said bill, etc. (*here set out the proceedings*).

(2) But your complainant respectfully represents (*here state the matter which is the occasion for the amendment or supplement*).

Wherefore, your complainant prays that the said C. D., E. F. and G. H. may be made defendants to this amended (*or* supsupplemental) bill; that the said E. F. and G. H. be required to answer this amended (*or* supplemental) bill on oath (*or waive *oath*); that the said C. D. be required to answer both the original bill filed in this cause, and this amended (*or* supplemental) bill on oath; and that your complainant may have all such further and other and general relief in the premises as the nature of his case may require, or to equity shall seem meet.

A. B. Complainant.

J. C., Counsel.

Text pages 276 and 292; Va. Code, § 6095; Barnes' W. Va. Code, Ch. 125, § 12.

90. Order Amending Bill before Appearance by the Defendant.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D.
} In Chancery. Order.

This .... day of ......, 19.., before any appearance by the defendant, the plaintiff amends his bill at bar in several important particulars as shown by the amendments themselves on a separate paper, marked "Amendments to Bill."

Idem.

91a. Decree Allowing Bill to Be Amended after an Appearance and Demurrer.

A. B.
v.
C. D.
} In Chancery. Int. Decree.

This .... day of ......, 19.., the defendant filed a demurrer to the plaintiff's bill which demurrer is here set down for argument; and the matters of law arising thereon being argued by counsel and considered by the court, the said demurrer is hereby sustained, and said bill adjudged not to be sufficient in law.

And thereupon the plaintiff moved the court for leave to amend his bill of complaint; and the court being of opinion that the insufficiency of the bill is such as may be relieved by amendment, the plaintiff hath leave to amend his said bill, but such amendment is directed to be made on a separate paper or in such manner as to show in what particulars the said bill is amended.

Idem.

91b. Decree Allowing Bill to Be Amended after Answer Filed by the Defendant.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Int. Decree.
C. D.

This ..... day of ......, 19.., the defendant tendered and filed his answer to the plaintiff's bill of complaint; whereupon the plaintiff moved the court for leave to amend his said bill, and the court having read and considered said bill and the answer thereto, is of opinion that said amendment is necessary and proper. The plaintiff therefore, hath leave to amend his said bill but such amendment is directed to be made as a separate paper or in such manner as to show in what particulars the said bill is amended.

Idem.

91c. Decree Allowing Bill to Be Amended by Adding New Parties, and Remanding Cause to Rules for That Purpose.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This .... day of ......, 19.., the defendant filed a demurrer to the plaintiff's bill which demurrer is here set down for argument; and the matters of law arising thereon being argued by counsel and considered by the court, the said demurrer is hereby sustained, and said bill is adjudged not to be sufficient in law.

And thereupon the plaintiff moved the court for leave to amend his bill by making G. H., and L. K. parties defendant thereto. And it appearing to the court that the said G. H. and L. K. are necessary parties to this suit in order to a full determination of the matters in controversy involved therein, it is therefore adjudged, ordered and decreed that the said plaintiff be and he is hereby permitted to amend his said bill so as to make G. H. and L. K. parties defendant thereto. And upon further motion of the plaintiff this cause is hereby remanded to rules, to amend said bill in the manner hereinbefore indicated, and sue out process summoning said new parties to be made thereto, to answer the same.

Idem; text page 278.

91d. Decree Allowing Bill to Be Amended to Conform to the Proofs and without Prejudice to an Injunction Issued in the Cause.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Int. Decree.
C. D.

This cause came on this .... day of ......, 19.., to be heard upon the bill and its exhibits; upon the defendant's answer with general replication thereto; upon the depositions on behalf of the plaintiff taken and filed in the cause, and was argued by counsel. Thereupon the plaintiff asked leave of court to amend his bill of complaint filed herein at bar, so that the same may conform to the proofs already taken in this cause. It is, therefore, on motion of counsel for complainant, adjudged, ordered and decreed that the plaintiff have leave to amend now here at bar his said bill of complaint, so that the same will conform to the proofs of cruelty already taken herein, and which amendment is shown on a separate paper from said bill, marked "Amendments to Bill," and filed in the papers of this cause. And on motion of the defendant this cause is continued, to enable him to take further proofs in order to meet the allegation of cruelty as shown by said bill as amended in the manner and to the extent above named.

And it is further adjudged, ordered and decreed that the proofs already taken herein be retained.

Idem.

92. Amendments to Bill.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. } In Chancery. Amendments.

Amendments to the bill of complaint made by leave of court in personam to its decree entered herein on the .... day of ......, 19...

1. (*Here insert in order the amendments.*)

A. B.
By Counsel.

A. M., Counsel.

Idem.

XI. Cross-Bill and Answer in the Nature of a Cross-Bill

93. Cross-Bill.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. } In Chancery. Cross-Bill.

To the Hon. ......, Judge of the said Court:

Your complainant, C. D., respectfully represents:

(1) That on the .... day of ......, 19.., A. B. filed a bill of complaint in this court against your complainant wherein he set forth that (*here set out the stating part of the bill*), and thereupon he prayed that (*here set out the prayer of the bill*). And your complainant appeared and answered the said bill, and issue was duly joined, and certain proofs have been produced in the cause.

(2) But your complainant respectfully represents (*here state the matter which is the occasion for the cross-bill*).

Wherefore your complainant prays that (*here state the relief *specially desired*); that the said A. B. be made a defendant to this bill. and be required to answer the same on oath, (*or waive oath*); that proper process may issue; that all proper orders and decrees may be made; and that your complainant may have all such further and other and general relief in the premises as the nature of his case may require or to equity shall seem meet.

C. D., Complainant.

J. C., Counsel.

Text page 283; Va. Code, § 6097; Barnes' W. Va. Code, Ch. 125, § 35.

94. (W. Va.) Answer in the Nature of a Cross-Bill Setting up a Claim to Affirmative Relief.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Answer and Cross-Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your complainant, C. D., respectfully represents:

(1) That this defendant admits that he and the said plaintiff were duly married on the .... day of ......, 19.., as alleged in plaintiff's said bill.

(2) And this defendant, further answering says, that it is true that there was born unto the plaintiff and defendant the children named in the said bill, whose ages are as therein stated.

(3) This defendant, for further answer unto the said bill, says that he denies (*here set forth the matters denied.*)

And now this defendant, for further answer unto said bill, setting up a claim to affirmative relief against the said plaintift, answering, says, that on or about the .... day of ......, 19.., the said plaintiff wilfully, voluntarily and without just cause or excuse deserted defendant (*here insert the details of desertion*).

Plaintiff therefore prays that the said A. B. may be made a defendant to this answer setting up a claim to affirmative relief and required to answer the same; that the defendant may have a divorce from the bonds of matrimony from the said A. B. upon the ground hereinbefore set forth; and that said defendant may be dismissed with his costs as to the plaintiff's said bill; and grant unto the defendant such other relief as the nature of his case as set forth in this, his answer, may require, and as in duty bound he will ever pray, etc.

C. D.
By Counsel.

Q. M., Counsel.

Text page 289; Barnes' W. Va. Code, Ch. 125, § 35. Adapted from Carlin's Hogg's Equity Procedure.

XII. Petitions

95. Petition by New Party to Suit.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Petition.
C. D.

To the Hon. ......, Judge of the ...... Court of ...... of ......, ...:

The undersigned petitioner respectfully represents:

(1) That there is now pending in your honor's court a chancery suit, the short style of which is (*here state brief style of suit*); and,

(2) That the objects of said suit are (*here state objects*); and,

(3) That your petitioner is interested in the said suit by reason of the fact that (*here state interests of petitioner*); and,

Your petitioner therefore prays that he may be made a party defendant to the said suit; (*in West Virginia insert,* that the plaintiff be required to amend his bill so as to show the petitioner's interest in the matter of controversy in said suit, and so as to properly make this petitioner a defendant thereto); that the said plaintiff in said suit, as well as the defendants thereto, may be made parties to this petition; that proper process may be is-

sued and served upon the parties so asked to be made defendants to this petition; that your petitioner may be (*here state the relief desired*) and such other and further relief as the nature of your petitioner's case may require and to equity shall seem meet.
......, 19..

E. F., By Counsel.

Q. M., Counsel.

Text page 295; Va. Code, § 6096. Adapted from Carlin's Hogg's Equity Procedure.

96. Order Making Petitioner Party to the Suit.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This day came E. F. and presented his petition to the court, (duly verified) praying to be made a party to this cause. And the court having examined and considered the said petition, and it appearing to the court that the said E. F. may properly be made a party thereto, it is therefore hereby adjudged, ordered and decreed that the said petition be filed in the papers of this cause, and that the said E. F. be made a party thereto, with full liberty to take such steps in the cause as he may be advised that his interests require. (*In West Va. add* And it is further adjudged, ordered and decreed that the plaintiff's bill be so amended as to show that the said E. F. has been made a party to this cause, and properly brought into the suit for all purposes of the regular procedure herein, so far as the same may affect the said E. F.)

Idem.

97. Petition for Rehearing.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Petition.
C. D.

To the Hon. ......, Judge of the said Court:

The undersigned, your petitioner, respectfully represents unto your honor, that he is aggrieved by a decretal order made by your honor in the above entitled cause on the .... day of ......, 19.., whereby it was, among other things, ordered and decreed that (*here insert the part of the decree complained of*): and your petitioner submits that so much of the said decree as directs that (*here set forth that part of the decree claimed to be erroneous*) is erroneous because your petitioner sheweth unto your honor that (*here set out the facts and grounds showing wherein the decree is erroneous.*)

Your petitioner further sheweth unto your honor that it will readily appear that the said decree is erroneous in the matters hereinabove complained of, when the bill in said cause and its exhibits filed therewith, your petitioner's answer thereto, and all the proceedings had in said cause, are examined and considered, which are referred to, exhibited with, and made parts of this petition.

Your petitioner here further sheweth unto your honor that the decree above complained of is not final, but interlocutory, as from an inspection of the record in said case herewith exhibited will be made apparent.

Your petitioner therefore prays that your honor will be pleased to vouchsafe a rehearing of this cause by your honor; that the said decree may be corrected as to the matters of error hereinabove set forth, and to that extent the said decree may be set aside and annulled; and grant unto your petitioner such other and further relief as the nature of his complaint may require, and as in duty bound he will ever pray, etc.

................, 19..

C. D.
By Counsel.

Q. M., Counsel.

(*Append proper affidavit see Forms 32.*)

Text page 297. Adapted from Carlin's Hogg's Equity Procedure.

98. Petition Where the Petitioner Was Proceeded against as an Unknown Party.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Petition.
C. D.

To the Hon. ......, Judge of the said Court:

The undersigned, your petitioner, respectfully represents unto your honor that a decree was rendered in the above entitled cause on the .... day of ......, 19.., and within ...... years of the date of this petition, against your petitioner and others, and by which your petitioner is aggrieved, upon an order of publication; and in which your petitioner was proceeded against as an unknown party and was not served with process or a copy of the judgment or decree therein; that your petitioner has not been served with a copy of the said decree at any time; that your petitioner was proceeded against as an unknown party and did not appear and made any defense in or to the above entitled suit; that your petitioner has a just and valid defense thereto, because, as your petitioner avers (*here the grounds of defense may be set out, though it is not necessary to show the existence of any defense in order to have a rehearing under the statute*),

Your petitioner here refers to the bill filed in said cause, its exhibits, all the process, papers and entire record therein, for the purposes of this petition, and asks that they may be taken and read as parts hereof.

Your petitioner therefore prays that the said decree may be reopened and reheard and that your petitioner, upon giving bond for costs as required by statute, which he is willing and now offers to do, may be allowed to make such defense to said cause as he may be advised is lawful and proper; and grant unto your petitioner such further and general relief as equity and the law in such cases made and provided may require.

C. D.
By Counsel.

................, 19..

Q. M., Counsel.

Idem. Va. Code, § 6072; Barnes' W. Va. Code, Ch. 124, § 14.

XIII. Forms in Proceedings for Review

99. Petition for Leave to File a Bill of Review.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Petition.
C. D.

To the Hon. ......, Judge of the said Court:

Your petitioner, A. B., the above named complainant, respectfully represents:

(1) That on the .... day of ......, 19.., he filed his bill in this honorable court against C. D., for the purpose of (*here state the object of the bill*); and praying (*here state the prayer of the bill*).

(2) That the said C. D. being served with process, appeared and put in his answer thereto; to which a replication was filed, and the said case being at issue, witnesses were thereupon examined and the proofs closed. And that said case was brought to a hearing before your honor on the .... day of ......, 19..; whereupon a decree was rendered to the following effect: (*here set forth the substance of the decree*).

(3a.) That he is advised that the said decree is erroneous, and ought to be reviewed, reversed and set aside for many apparent errors and imperfections, among which are the following:

The court erred in (*here set forth the error or errors complained of*).

(*Or if for newly discovered evidence*):

(3b.) Your petitioner further represents that he is advised that the said decree is erroneous and ought to be reviewed, reversed and set aside because of material evidence not in the cause, which has been discovered since the said decree, was not known to your petitioner previous to or at the time of the hearing and pronouncement of said decree, and could not have been then discovered by the exercise of any diligence on your petitioner's part, and which is not cumulative and is such evidence as would probably have produced a different result had it been used at the hearing of said cause; as follows, to-wit: (*here insert what is proposed to be proved*).

Your petitioner therefore prays that leave may be granted to him to file a bill of review against the said C. D. for the purpose of having the said decree reviewed, reversed and set aside; and that no further proceedings may be had under the same.

A. B.
By Counsel.

A. M., Counsel.

Tex page 302; Va. Code, § 6316; Barnes' W. Va. Code, Ch. 133, § 5.

100. Order for Leave to File a Bill of Review.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This cause came on this .... day of ......, 19.., to be heard upon the petition of C. D., the defendant, praying for leave to file a bill of review therein, and counsel for the respective parties having been heard, and the court being fully advised in the premises, doth hereby adjudge, order and decree that the said C. D. be at liberty to file a bill of review, touching the several matters in said petition mentioned and for relief in the premises as he may be advised.

Idem.

101. Bill of Review.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your complainant, C. D., respectfully represents:

(1) That at the ...... term, 19.., of this court A. B. exhib-

ited his bill in chancery against your orator, and therein set forth that (*here insert the matter and object of the original bill*);

(2) And your orator being served with a summons for that purpose, appeared and answered the said bill to the following effect (*here insert the substance of the answer*);

(3) And issue having been duly joined upon said bill and answer, and the proofs produced and read, it was decreed (*here insert the substance of the decree or decrees sought to be reviewed*), which said decree (*or* decrees) your orator insists is erroneous, because of errors upon the face thereof in this (*here insert the errors complained of. Or* because of material evidence not in the cause, which has been discovered since the said decree, which was not known to your orator previous to or at the time of the hearing and pronouncement of said decree and which could not have been discovered before the same by the exercise of any diligence on your orator's part, which is not cumulative, and is such evidence as would probably have produced a different result had it been used at the hearing of said cause, to-wit: *then insert what is proposed to be proved*).

(4) That this bill is exhibited within (*in Virginia,* one year; *in West Virginia,* eight months) next after the aforesaid decree was rendered; and

(5) That your orator is interested in the matter disposed of by said decree as set out above; (*or state interest*) and that he will be benefited by a reversal (*or* modification) of said decree;

In consideration whereof, your orator prays that the said A. B. may be made a party defendant to this bill and be required to answer the same; that the said decree may be reviewed and set aside (*or* that he, the said A. B., may be allowed to introduce his said evidence), and that relief may be had against the same; that, in lieu thereof, the court shall decree (*here insert the desired relief*), and that all such other, further and general relief as in the premises may be just and right may be granted. And your orator will ever pray, etc.

A. B., By Counsel.

Q. M., Counsel.

(*If the review is sought for after-discovered evidence, the bill must be supported by affidavit; see Form 32.*)

Idem.

XIV. Demurrers

102a. The Short and Usual Form of Demurrer.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Demurrer.
C. D.

The demurrer (*or,* joint and several demurrers) of C. D. (and E. F., etc.) defendants (*or, if to a cross bill,* plaintiff) to the bill of complaint (*or,* cross bill) of A. B., plaintiff (*or* defendant).

The defendant (*or,* defendants, *or* plaintiff, etc.) says (*or,* say) that the bill (*or,* cross bill) filed in this cause is not sufficient in law, and especially in that (*here insert grounds of demurrer in detail by number*).

A. B.
By Counsel.

Q. M., Counsel.

Text page 316; Va. Code, § 6115; Barnes W. Va. Code, Ch. 125, § 28.

102b. Long Form of Demurrer.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Demurrer.
C. D. et als.

The demurrer of C. D., defendant, to the bill of complaint filed against him and others by A. B., plaintiff.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, doth demur thereto, and for cause of demurrer showeth that it appears by the said bill that the same is exhibited against this defendant and J. H., J. C., T. S., and W. T., as codefendants for several and distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, by reason of which distinct matters the said plaintiff's said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof, and by joining distinct matters together, which do not depend on each other in the said bill, the pleadings, orders and proceedings will, in the progress of the said suit, be intricate and prolix, and this defendant put to unnecessary charges in taking copies of the same, although several parts thereof no way relate to or concern him. Wherefore, and for divers other errors and imperfections, this defendant demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained; and prays hence to be dismissed with his reasonable costs in this behalf sustained.

A. B.,
By Counsel.

Q. M., Counsel.

Idem.

103. Decree Sustaining Demurrer to Bill and Remanding Cause to Rules with Leave to Amend.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Int. Decree.
C. D.

This day the defendant filed a demurrer to the plaintiff's bill, which demurrer is set down for argument; and the matter of law arising thereon being argued by counsel and considered by the court, said demurrer (*or state what portions are sustained*) is hereby sustained, and said bill adjudged not to be sufficient in law. Upon motion of the plaintiff this cause is remanded to rules with leave to make any and all proper and germane amendments to said bill, but at the costs of the said plaintiff, and to be taxed accordingly by the clerk of this court.

Idem; text page 334.

104. Decree Overruling Demurrer to Bill and Giving Rule to Answer.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Int. Decree.
C. D. and E. F.

This day the defendant filed a demurrer to the plaintiff's bill which demurrer is set down for argument; and the matters of law arising thereon being argued by counsel and considered by the court, said demurrer is hereby overruled. And thereupon a rule is hereby given the defendant to answer said bill on or before the .... day of ......, 19..

Idem; text page 334.

XV. Pleas

105. Plea to the Jurisdiction.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Plea.
C. D. and E. F.

The plea of C. D., defendant, to the bill of complaint exhibited against him and E. F. in this court by A. B.

This defendant, for plea to the said bill, saith that he is now, and was at the time of the institution of this suit, a resident of the ...... of ......, and not a resident of the ...... of ......; that his co-defendant, E. F., is now, and was at the time of the institution of this suit, also a resident of the ...... of ......, and not a resident of the ...... of ......; and that they are the sole defendants in the said suit, and that said suit is brought to subject to the alleged judgment of the said plaintiff certain land, every part whereof lies in the ...... of ......, and not any part thereof in the ...... of ...... Wherefore, the defendant doth plead to the said bill and to the jurisdiction of the said court, and prays the judgment of the court whether he should be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.

A. M., Counsel.

(*Append affidavit as in Form No. 32.*)

Text page 337; Va. Code, §§ 6103, 6105, 6113; Barnes' W. Va. Code, Ch. 125, §§ 15, 16, 26.

106. Plea of Infancy.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., defendant, to the bill of complaint exhibited against him in this court by A. B.

This defendant, for plea to said bill, says that the said complainant, at the time of filing his said bill, was, and now is, an infant under the age of twenty-one years, that is to say, of the age of ...... or thereabouts. Wherefore, the defendant doth plead to the said bill and to the jurisdiction of the said court, and prays the judgment of the court whether he should be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.

A. M., Counsel.

(*Append affidavit as in Form No. 32.*)

Idem.

107. Plea of Insanity.

In the ...... Court of ...... of ......, ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., defendant, to the bill of complaint exhibited against him in this court by A. B.

This defendant for plea to said bill says that the complainant who, by himself alone, brings this suit, before and at the time of filing his said bill, was duly found and declared to be a lunatic, under and by virtue of a commission of lunacy, duly awarded and issued against him, as by the inquisition thereon (a true copy whereof is now in this defendant's possession, and ready to be produced to this honorable court) to which this defendant craves leave to refer, will more fully appear; and which said commission has not hitherto been superseded, and still remains in full force and effect; and the said A. B., therein named, and the said plaintiff is, as this defendant avers, one and the same person, and are not other and different persons.

Wherefore, this defendant humbly prays judgment of this court whether he shall be compelled to make any further or other answer to the said bill of complaint, and prays to be dismissed with his reasonable costs and charges in this behalf sustained.

C. D.

A. M., Counsel.

(*Append affidavit as in Form No. 32.*)

Idem.

108. Plea That the Complainant Has No Interest in the Lands, the Title of Which He Seeks to Discover.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., defendant, to the bill of complaint exhibited against him in this court by A. B.

The defendant for plea to so much of the complainant's bill as seeks to compel him to set forth and discover his title in and to the lands and tenements in the bill of complaint mentioned, or any part thereof, says, that the said complainant hath sold and conveyed away unto ...... of ......, in the ...... and ...... of ......, all his estate, title, interest or claim of or to the said lands and tenements in his said bill of complaint mentioned. Wherefore this defendant is advised that the complainant has no interest of, in or to the said lands and tenements; and he therefore prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill of complaint in this particular, and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.

A. M., Counsel.

(*Append affidavit as in Form No. 32.*)

Idem. Adapted from Carlin's Hogg's Equity Procedure.

109. Plea to Bill of Discovery.

In the ...... Court of ...... of ......, ...:

A. B.
v.
C. D.
In Chancery. Plea.

The plea of C. D., defendant, to the bill of complaint exhibited against him in this court by A. B.

The defendant, for plea to so much and such part of the said complainant's bill as seeks a discovery from this defendant, says (*here state why the discovery is opposed*). Therefore, this defendant avers and pleads the same to the said complainant's bill, and prays the judgment of this honorable court whether it will hold plea upon and enforce this defendant to answer the said complainant's said bill, for the cause aforesaid.

C. D.

A. M., Counsel.

(*Append affidavit as in Form No. 32.*)

Idem.

110. Plea of the Statute of Limitations.

In the ...... Court of the ...... of ...., ...:

A. B.
v.
C. D.
In Chancery. Plea.

The plea of the defendant, C. D., to a bill of complaint filed against him in this court by A. B.

For plea to the said bill, and to the whole and every part thereof, and to all and every the relief therein prayed, this defendant says that neither the complainant's alleged grounds of relief, nor any claim in said bill asserted, arose within ...... years before the bringing of this suit.

Wherefore defendant prays judgment whether he shall be compelled to make answer to said bill, and prays to be hence dismissed with his reasonable costs and charges in this behalf expended.

C. D.
By Counsel.

A. M., Counsel.

Text page 346; Va. Code, §§ 6113, 6124, 6250; Barnes' W. Va. Code, Ch. 125, §§ 26, 39; Ch. 131, § 8.

111. Plea of the Statute of Frauds.

In the ...... Court of the ...... of ...., ...:

A. B.
v.   } In Chancery. Plea.
C. D.

The plea of C. D., defendant, to a bill of complaint filed against him in this court by A. B.

The defendant says that neither he nor anyone by him authorized, did ever sign any contract or agreement in writing, for making and executing any sale or conveyance to the complainant of the land and premises in the bill mentioned and described, or of any interest therein, or to any such effect, or any memorandum or note in writing of any such agreement.

Wherefore this defendant humbly prays judgment of this court whether he shall be compelled to make any further or other answer to the said bill of complaint and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.
By Counsel.

A. M., Counsel.

Idem; text page 347.

112. Plea of Dismissal of Former Suit for Same Matter.

In the ...... Court of the ...... of ...., ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., defendant, to a bill of complaint exhibited against him in this court by A. B.

This defendant for plea to the said bill, says that the said complainant heretofore, to-wit: on the .... day of ......, 19.., exhibited his bill of complaint in the ...... court of ...... of ......, against this defendant, by which bill the said complainant sought to subject the land of this defendant, lying and being in the County of ......, containing ...... acres, and being the same land mentioned in the bill to which this is a plea, to the payment of the judgment of the said complainant, being the same judgment mentioned in the present bill of complaint, and the said complainant in his said former bill of complaint, alleged that the said judgment was a lien on the said land, as he had alleged in the present bill, and prayed for the identical relief against this defendant's said land that he has prayed for in his present bill; and to the said former bill this defendant filed his answer, denying that his said land was subject to the said judgment, and examinations of witnesses for the said complainant and for this defendant were had and taken, and said former bill of complaint with the said answer and the examinations of witnesses came to a hearing before the said ...... court of the ...... of ......, and the said court, after full hearing thereof, on the .... day of ......, 19.., dismissed the said former bill, and decreed and ordered that the said complainant should pay to this defendant his costs by him about his decree in that behalf expended; all which matters and things this defendant doth aver and plead in bar to the said present bill of complaint, wherefore this defendant prays judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays hence to be dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

C. D.,
By Counsel.

A. M., Counsel.

Idem; text page 348. Adapted from Carlin's Hogg's Equity Procedure.

113. Plea of Stated Account.

In the ...... Court of the ...... of ...., ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., the defendant, to a bill of complaint exhibited against him in this court by A. B.

The defendant for plea to said bill, says that on the .... day of ......, 19.., which was previous to the filing of the said bill of complaint and the issuing of process thereon, the said complainant and this defendant did make up, state and settle an account in writing of all sums of money which this defendant had before that time, by the order and direction and for the use of the said complainant, received, and of all matters and things thereunto relating or at any time before the said .... day of ......, 19.., being or depending between the said complainant and this defendant (and in respect whereof the said complainant's bill of complaint has been since filed); and the said complainant, after a strict examination of said account and every item and particular thereof, which this defendant avers, according to the best of his knowledge and belief, to be true and just, did approve and allow the same, and actually received from this defendant the sum of $ ......, the balance of the said account, which by the said account appeared to be justly due to him from this defendant, and the said complainant thereupon, and on the .... day of ......, 19.., gave to this defendant a receipt or acquittance for the same under hand in full of all demands, which said receipt or acquittance is in the words and figures following, that is to say: (*here copy the receipt*); as by the said receipt or acquittance now in the possession of this defendant and ready to be produced to this honorable court will appear. Wherefore this defendant humbly prays judgment of this court whether he shall be compelled to make any further or other answer to the said bill of complaint and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.
By Counsel.

A. M., Counsel.

Idem; text page 353. Adapted from Carlin's Hogg's Equity Procedure.

114. Plea of Award.

In the ...... Court of the ...... of ...., ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., the defendant, to a bill of complaint exhibited against him in this court by A. B.

This defendant for plea to the said bill, says that disputes having arisen between the said complainant and this defendant concerning (*here state subject of dispute*), for the settling of all such disputes the said complainant and this defendant agreed to submit the same to the final judgment, award, and arbitration of A. R., and the said A. R., having taken upon himself the burden of said award, after having at large heard, read and duly weighed and considered all and singular the allegations, proofs an evidences brought before him did on the .... day of ......, 192.., make his final award in writing under his hand and seal of and concerning the matters of dispute aforesaid, and did hereby award and find (*here state substance of award*), as by the said award, reference being thereto had, will more fully appear; and this defendant avers that the matters complained of in said complainant's bill were embraced in said award, and that the said award hath hitherto remained and is still unimpeached and in full force and effect; and this defendant avers that he hath paid in full to the said complainant the sum of money awarded him by said award, and that the said award was made and said payment was made previously to the said complainant's bill being filed in this honorable court. Wherefore this defendant humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to the said bill of complaint and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.
By Counsel.

A. M., Counsel.

Idem.

115. Plea of Release.

In the ...... Court of the ...... of ...., ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., defendant, to a bill of complaint exhibited against him in this court by A. B.

This defendant for plea to said bill, says that previously to the complainant's bill being filed, to-wit: on the .... day of ......, 19.., the said complainant in consideration of the sum of $......, then paid to him by this defendant, by a certain writing under his hand and seal, ready to be produced to this honorable court, did release and forever quit claim this defendant (among other things) the several matters and things in the said complainant's bill mentioned and complained of, and an account of which is thereby sought against this defendant, and this defendant avers that the said release was freely and fairly given and executed by the said complainant, on the day the same bears date, and that the said complainant well knew the nature and effect thereof previously to executing the same; and that the sum of $......, so paid by this defendant to the said complainant, was a full and fair equivalent for any demand which the said complainant could or might have against this defendant in respect to the several matters therein and in the said bill also mentioned. Wherefore this defendant pleads the said release in bar of the said complainant's bill, and prays judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.
By Counsel.

A. M., Counsel.

Idem; text page 354. Adapted from Carlin's Hogg's Equity Procedure.

116. Plea of a Will.

In the ...... Court of the ...... of ...., ...:

A. B.
v. } In Chancery. Plea.
C. D.

The plea of C. D., the defendant, to a bill of complaint exhibited against him in this court by A. B.

This defendant for plea to said bill says that the plaintiff claims to be heir-at-law of one E. F., and to have inherited as such among other property a lot of land in the ...... of ...... (*here describe the property*); that the said E. F., being of sound mind and disposing memory prior to his death, made a last will and testament, and that the same has been duly admitted to probate in the ...... Court of the ...... of ......, ...; and this defendant further says that by the said will so probated as aforesaid, the said E. F. devised the said lot of land to this defendant. Wherefore this defendant humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to the said bill of complaint and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.,
By Counsel.

A. M., Counsel.

Idem; text page 355.

117. Order Setting Plea Down for Argument.

In the ...... Court of the ...... of ...., ...:

A. B.
v. } In Chancery. Order.
C. D.

Upon motion of the plaintiff the defendant's plea in bar filed in this cause is here set down for argument.

Text page 361; Va. Code, § 6120, 6136; Barnes' W. Va. Code, §§ 125, 30, 56.

118. Order Striking Plea in Abatement from the Record.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This day the plaintiff moved the court to strike from the record of this cause the plea in abatement filed therein at rules, which motion is set down for argument; and the matters of law arising thereon being argued by counsel and considered by the court, said motion is hereby sustained and said plea stricken from the record of this cause, as constituting no defense thereto.

Idem.

119. Decree Disallowing Plea.

In the ......Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on this day to be again heard on the papers formerly read, and on the plea of the defendant, set down for argument on the plaintiff's motion, and was argued by counsel. On consideration whereof, the court being of opinion that (*here set forth the grounds of plea*) is not a valid defense to the whole of the relief prayed in the bill; and the said plea being to the whole of such relief, and not to a part thereof, the court doth for that cause disallow the said plea, but without prejudice to the respondent's right, by answer, to assert the same defense to that portion of the bill which prays for a personal decree. And the defendant is ordered to answer the bill within fifteen days from the date of this order.

Idem.

120. Decree Allowing Plea.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D.
} In Chancery. Decree.

This cause came on this day to be again heard on the papers formerly read and on the plea of the defendant set down for argument on the plaintiff's motion, (*or* on the depositions of ...... duly taken and filed herein) and was argued by counsel.

On consideration whereof, the court being of opinion that (*here set forth the grounds of plea*) is a valid defense to the whole (*or state such parts of the bill as to which the plea is a defense*) of the relief prayed in the bill; the court doth allow said plea and doth hereby dismiss said bill of complaint at the plaintiff's costs. (*Or state the decision of the court and remand the cause to rules with leave to the plaintiff to amend his bill, or dismiss the suit without prejudice to the plaintiff to institute a new suit in a court of proper jurisdiction*).

Idem.

XVI. Answers and Orders Thereon

121a. Answer to Bill or Cross Bill—General Form.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D.
} In Chancery. Answer.

The answer of C. D. to a bill (*or*, cross-bill) of complaint filed against him in the ...... Court of the ...... of ......, by A. B., complainant (*or*, respondent).

This respondent reserving to himself the benefit of all just exceptions to the said bill (*or,* cross-bill) of complaint, for answer thereto, or to so much thereof as he is advised that it is material he should answer, answers and says:

(1) (*Here admit the correct allegations of bill.*)

(2) (*Here deny such of the allegations of the bill as are untrue.*)

(3) (*Here answer the several averments of the bill.*)

(4) (*Here state respondent's defense and view of the case.*)

(5) (*If defendant is ignorant of the statements in the bill, say,* this respondent says that he knows nothing of the truth or falsity of the allegations of the bill of complaint and calls for strict proof thereof.)

And now, having fully answered the complainant's bill (*or,* cross-bill) this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

C. D., Respondent.

A. M., Counsel.

(*Append the following affidavit if necessary*):

State of ......,

...... of ......, to-wit:

C. D., the respondent named in the foregoing answer being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

C. D., Respondent.

Taken, sworn to and subscribed before me, Y. Z., a notary public of and for the ...... and state aforesaid, in my ...... aforesaid, this .... day of ......, 19..

Y. Z., Notary Public.

Text page 366, 372; Va. Code, §§ 6120, 6122, 6123, 6128, 6129; Barnes' W. Va. Code, Ch. 117, § 6, Ch. 125.

121b. Answer to Bill—Another Form.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Answer.
C. D. et al.

The answer of C. D., the defendant, (*or,* the separate answer of C. D., one of the defendants, *or,* the joint and separate answers of C. D. and E. F., the defendants) to a bill of complaint filed against him (*or,* her, *or,* them) in the ...... Court of the ...... of ......, ..., by A. B., complainant:

(1) The respondent (*or,* these respondents) reserving to himself (*or,* themselves) the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as he is (*or,* they are) advised that it is material he (*or,* they) should answer, answers and says (*or,* answer and say) that:

(2) True it is, (*Here give a distinct and categorical answer to the several averments of the bill*);

(3) But this respondent denies (*Here insert the denial of such allegations of the bill as are not true*);

And this respondent denies (*or,* these despondents deny) all fraud, unlawful combination and confederacy; and having fully answered the complainant's bill, prays (*or,* pray) to be hence dismissed with his (*or,* their) reasonable costs by him (*or,* them) in this behalf expended, and he (*or,* they) will ever pray, etc.

C. D., Respondent.

A. M., Counsel.

Idem.

122a. An Amended or Supplemental Answer.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Amended (*or,* Supplemental) Answer.
C. D.

The amended (*or,* supplemental) answer of C. D. to the bill filed against him and others in this cause.

This defendant, in addition to (*or,* in explanation of; *or,* in correction of) the answer heretofore filed by him in this cause, leave of the court having been obtained, says that (*here set out the additions, explanations, or corrections stated or referred to in the order of the court allowing the amended or supplemental answer to be filed; and conclude as in an ordinary answer*).

Idem.

122b. Amended Answer after Exceptions Sustained to the Original.

In the ...... Court of the ...... of ...., ...:

A. B.
v. } In Chancery. Amended Answer.
C. D.

The further answer of C. D., defendant in this suit, to the original bill of complaint, and his answer to the amendments to such bill.

This defendant, saving and reserving to himself the same benefit of exceptions to the said original and amended bill as by his former answer to such original bill are saved and reserved, for answer thereto, answers and says:

This defendant, in further answer to such original bill, as to the matters to the third exception taken to his former answer, saith that: (*here set forth the matter introduced*).

And this defendant, in further answer to such original bill, in the matters of the sixth exception taken to his former answer, saith: (*here insert the matter*).

And this defendant for answer to the amendments made to such original bill, saith that, (*here insert the matter*).

(*Here append the usual conclusion to the answer.*)

Idem.

123. Exceptions to Answer in Equity.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Exceptions.
C. D.

Exceptions of A. B., complainant, to the answer of C. D., the respondent herein.

The complainant excepts to the answer of the said respondent and states the following grounds of exceptions: (*here state and number the grounds specifically*).

A. B., Complainant.

Q. M., Counsel.

Idem.

124. Order Allowing an Answer to be Amended.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This day the defendant moved the court for leave to amend his answer heretofore filed in this cause, by adding a new paragraph thereto, on page .... thereof, just after the word "....." and before the word "......," as shown by a separate paper marked "Proposed amendments to answer," and filed his own affidavit in support of said motion. And the court having considered said affidavit, answer and proposed amendment thereto, is of opinion that the said motion ought to be, and the same is hereby, granted, and said answer permitted to be amended in the particular above indicated, which amendment is hereby accordingly made.

Idem.

125. Order Tendering Answer and Asking Leave to File the Same.

In the ...... Court of the ...... of ....:

A. B.
v. } In Chancery. Order.
C. D.

This day the defendant, C. D., tendered his separate answer to the plaintiff's bill and asked leave to file the same, which is hereby granted and the answer accordingly filed.

Idem.

126. Order Filing Answer and General Replication Thereto.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This day the defendant filed his answer to the plaintiff's bill to which the plaintiff replied generally.

Idem.

127. Order Filing Answer and Noting Exceptions Thereto.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This day the defendant, C. D., filed his answer to the plaintiff's bill. Whereupon the plaintiff excepted to the said answer, filing his exceptions thereto in writing, which are endorsed on the said answer (*or,* which exceptions are written on a separate paper, marked "Exceptions of A. B., to the answer of C. D.") and which exceptions are here set down for argument.

Idem.

128. Order Adjudging Answer Insufficient and Directing Further Answer to Be Filed.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

The exceptions to the answer of C. D., filed in this cause being argued and considered by the court, said exceptions are hereby sustained, and the said answer is hereby adjudged insufficient. It is therefore ordered that the defendant answer the plaintiff's bill more fully and sufficiently; and that he pay the plaintiff his costs occasioned by such insufficient answer.

Idem.

129. Disclaimer in Chancery.

In the ...... Court of the ...... of ....:

A. B.
v. } In Chancery. Disclaimer.
C. D. and E. D.

The disclaimer of C. D. and E. D., his wife, to a bill of complaint exhibited against them and others in the ...... Court of the ...... of ......, ..., by A. B.

The said defendants, reserving to themselves all right of exception to said bill of complaint, say that they, the said defendants, do not know that they to their knowledge and belief ever had, nor did they, or either of them, ever claim or pretend to have, nor do they, or either of them, now claim any right, title or interest of, in or to the estate of the said T. H., deceased, either real or personal, in the said complainant's bill set forth, or any part thereof; and these defendants do disclaim all right, title, and interest to the said estate of the said decedent, and every part thereof. And these defendants deny all fraud, and all unlawful combination and conspiracy, and pray to be hence dismissed with their reasonable costs in this behalf expended; and they will ever pray, etc.

Idem.

XVII. Replications

130a. The General Replication. (Long Form.)

In the ...... Court of the ...... of ....:

A. B.
v. } In Chancery. Replication.
C. D.

The replication of A. B., complainant to the answer of C. D., the defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove this said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

A. B.,
By Counsel.

Q. M., Counsel.

Text page 407; Va. Code, §§ 6138, 6332; Barnes' W. Va. Code, Ch. 125, § 35.

130b. The General Replication. (Short Form.)

In the ...... Court of the ...... of ....:

A. B.
v.
C. D.
} In Chancery. Replication.

For replication to said answer, the plaintiff, by counsel, says that the matters and things in said answer alleged as defenses to the plaintiff's bill are not true.

A. B.,
By Counsel.

Q. M., Counsel.

Idem.

131. (W. Va.) The Plaintiff's Special Reply in Writing to the Answer of Defendant Setting up Claim to Affirmative Relief.

In the ...... Court of the ...... of ....:

A. B.
v.
C. D.
} In Chancery. Special Reply to Answer.

And now this plaintiff by way of special reply to the answer of the defendant filed in this cause, wherein the said defendant prays for affirmative relief against this plaintiff, says that (*here* *insert a denial of such parts of said answer as are not admitted to be true, and state any facts constituting a defense to the defendant's claim for affirmative relief.*) And now having fully specially replied to the said defendant's claim for affirmative relief, as made in said answer, the plaintiff prays hence to be dismissed as to so much of said answer as sets up any claim for affirmative relief against this plaintiff.

A. B.,
By Counsel.

Q. M., Counsel.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

132. (W. Va.) The Special Reply of a Defendant to the Answer of His Codefendant, Wherein Affirmative Relief Is Sought by the Latter against the Former.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D., E. F., et als
In Chancery.
Special Reply of Defendant to Codefendant.

And the defendant, C. D., by way of special reply to the answer of his codefendant, E. F., filed in this cause, wherein the said defendant, E. F., prays for affirmative relief against this defendant, says that (*insert here a denial of such parts of said answer as are not admitted to be true and stating any facts considered a defense to the defendant's claim for affirmative relief*). And now, this defendant, having fully specially replied to the claim of his codefendant, E. F., for affirmative relief as made in his said answer, this defendant, C. D., prays to be hence dismissed as to so much of said answer as sets up any claim for affirmative relief against this defendant, C. D.

C. D.,
By Counsel.

A. M., Counsel.

Idem.

XVIII. Depositions

133. Notice to Take Depositions.

To C. D. and E. F.:

Take notice that on the .... day of ......, 19.., at the office of ......, ... Street, in the ...... of ......, in the ...... of ...... and State of ......, between the hours of 9 o'clock A. M. and 6 o'clock P. M. of that day, I shall proceed to take the depositions X. Y. Z. and others, to be read in evidence in my behalf in a certain suit in equity pending in the ...... court of ...... and state of ......, in which I am the plaintiff and you are defendants; and, if from any cause the taking of said depositions be not commenced on that day, or if commenced, they be not completed on that day, the taking of the said depositions will be adjourned from day to day, at the same place and between the same hours, until they are completed.

A. B.,
By Counsel.

Q. M., Counsel.

Text page 411; Va. Code, §§ 6225-6228, 6232, 6234; Barnes' W. Va. Code, Ch. 130, §§ 33-38.

134. Affidavit of Non-Residence of Witness, That His Deposition May Be Taken.

State of ......,

...... of ......, to-wit:

A. B.
v.
C. D.
} In Chancery.

Pending in the ...... Court of the ...... and State aforesaid.

A. B., being by me first duly sworn, says that he is the plaintiff in the above styled action; that he desires to take the deposition of E. F., who is a nonresident of the state aforesaid, now residing at ......, in the county of ...... and state of ......

....

(Signed)

A. B.

Taken, subscribed and sworn to before me this .... day of ...., 19...

Notary Public (*Or other officer.*)

Idem.

135. Deposition.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D.
} Deposition.

The deposition of G. W. and others, taken before me, G. G., a notary public (*or other public officer*) for the .... of ......, in the state of ......, pursuant to notice hereto annexed at ...... (*the place indicated in the notice*), in ......, on the ...... day of ......, 19.., between the hours of 9 o'clock A. M. and 6 o'clock, P. M. to be read as evidence on behalf of C. D., in a certain suit in equity depending in the ...... court of ...... county (*or city*) in the state of ...... wherein C. D. is the defendant and A. B. the plaintiff.

Present: A. M., attorney for the defendant.
Q. M., attorney for the plaintiff.

The witness, G. W., being duly sworn, deposes as follows:

1. First question for defendant.
   Answer.
2. Second question for same.
   Answer.

(*Continue thus the examination in chief to the end.*)

Cross-Examination:

1. First question for plaintiff.
   Answer.
2. Second question for same.
   Answer.

(*Continue the cross-examination to the end.*)

Re-Examination:

1. First question for defendant.
   Answer.
2. Second question for same.
   Answer.

(*Continue the re-examination to the end.*)

And further this deponent saith not.

G. W. (*or* signature waived).

No other witness appearing, the further taking of these depositions is continued until tomorrow, at the same place, and between the same hours.

G. G., Notary Public (*or proper title*).

Office of ...... in the ...... of ......, this ...... day of ......, 192...

Present: A. M., Attorney for defendant;
Q. M., Attorney for plaintiff.

The witness, J. S., being duly sworn, deposes as follows:

(*as in case of the first witness.*)

And further this deponent saith not.

J. S.

State of ......,
County (*or City*) of ......, to-wit:

I, G. G., a notary public (*or proper title*) for the county (*or city*) of ...... in the state of ......, do hereby certify the foregoing depositions were duly taken, reduced to writing, and signed by the witnesses, respectively, before me, at the place and time therein mentioned, pursuant to the annexed notice.

In witness whereof I have hereunto set my hand (*and affixed my official seal*) at ...... aforesaid, this .... day of ......, 19...

G. G., Notary Public.

(Seal)

My commission expires ......, 19...

Idem.

136. Exceptions to Depositions.

A. B.
v. } In Chancery. Exceptions to Depositions.
C. D.

Pending in the ...... Court of the ...... of ......, and State of ......

Exceptions of the plaintiff, A. B., to the depositions (*or*, certain parts of the depositions) of X. Y. Z., taken and filed on behalf of the defendant in the above named cause.

The plaintiff excepts to the deposition (*or*, the following portion or parts of the depositions of) of X. Y. Z., taken and filed by the defendant in the above entitled cause on the .... day of ......, 19.., and, as appears from the endorsement thereon made, filed with the Clerk of the said court on the .... day of ......, 19.., upon the following grounds: (*here state and number the exceptions*).

The plaintiff therefore excepts to the foregoing deposition (*or*, foregoing parts of said deposition) of X. Y. Z. and prays that the same may not be read nor considered upon the hearing of said cause.

A. B.
By Counsel.

Q. M., Counsel.

Idem.

XIX. Miscellaneous General Decrees

137. Order Placing Cause on Docket and Setting It for Hearing.

A. B. et al.
v. } Order.
C. D. et al.

This day by their counsel came the three complainants, A. B., G. H. and J. K. and by leave of court filed their bill of complaint; and came also the two adult defendants, C. D. and E. F., and by like leave of court filed their separate answers to said bill; and the court of its own motion did appoint a discreet and competent attorney at law, as the guardian *ad litem* of the four infant defendants, to defend them in this suit, and the said guardian *ad litem* thereupon by leave of court filed the answer of the said four infants to the bill of complainants by him as their guardian *ad litem* and the answer of the guardian *ad litem* in proper person. And the complainants declined to reply to said answers, and the cause was thereupon placed upon the docket and set down for hearing.

Text page 434.

138. Order Dismissing Suit Agreed.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This day came the parties to this cause by their attorneys, and thereupon the suit is hereby dismissed "agreed."

139. Order Dismissing Bill without Prejudice.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This cause came on this day to be heard upon the plaintiff's bill and exhibits; upon the defendant's demurrer filed thereto; and upon the argument of counsel. Upon consideration of which the court is of opinion to and doth hereby sustain said demurrer, the court being further of opinion that the bill presents a case of which a court of equity can not take cognizance, but that the same is proper for the jurisdiction of a court of law.

It is therefore adjudged, ordered and decreed that the plaintiff's bill be and the same is hereby dismissed, but without prejudice to his right to bring an action at law upon the demand herein sued on if he shall so desire. It is also ordered that the plaintiff do pay unto the defendant his costs about his defense in this behalf expended.

140. Final Decree.

In the ...... Court of the ...... of ......, ...:

A. B., Complainant
v.
C. D., Defendant
} In Chancery. Final Decree.

This day came the parties, plaintiff and defendant by counsel, and it being represented to the court that the decree of this court has been executed to the entire satisfaction of both parties plaintiff and defendant, and that all costs have been paid, and on motion of both plaintiff and defendant by counsel, this cause is ordered to be stricken from the issue docket and placed among the ended causes, with leave, however, to be reinstated on motion of any person in interest after notice to the adverse party.

XX. Forms in Issues Out of Chancery

141. Decree Directing Issue Out of Chancery in Causes Other than Devisavit Vel Non.

In the ...... Court of the ...... of ......, ...:

A. B. and C. D.
v.
E. F
} In Chancery. Decree.

This cause came on this .... day of ......, 19.., to be heard upon the bill of complaint and exhibits filed therewith; upon the answer of C. D., and the general replication to said answer; (*in Virginia*, upon the affidavits duly filed by the plaintiffs, A. B. and C. D., and was argued by counsel; and the court being of the opinion from the said affidavits that this cause will be rendered doubtful by the conflicting evidence of the defendant, E. F., it is adjudged, ordered and decreed, *or, in Virginia and West Virginia*, upon the depositions duly taken and filed and was argued by counsel; and the court being of the opinion that there is such a conflict in the evidence as in its opinion to render it proper that an issue should be made up and tried by a jury at the bar of this court, *or designate court*, it is adjudged, ordered and decreed) that an issue be made up and tried at the bar of this court (*or*, at the bar of the ...... court of the ...... of ......) to ascertain and try whether the claim of the plaintiffs, A. B. and C. D., in the character of creditors of E. F. is fair and *bona fide* (*or*, fictitious and fraudulent, *as the case may be*). And it is ordered, that on the trial of the said issue, the plaintiffs, A. B. and C. D. shall maintain the affirmative, and the defendant, E. F., the negative; and on the trial of said issue, the bill, answers, exhibits, and the depositions of such of the witnesses as are dead, or whose attendance cannot be secured, may be read in evidence, and such other evidence may be introduced by either plaintiffs or defendant as may be legal and proper.

(*If the trial is directed at the bar of another court, add*: And the said ...... Court of the ...... of ......, is requested to send and certify the verdict of the jury on such issue to this court, together with any special circumstances which may occur at the trial, and the said ...... court of the ...... of ...... may think it right to report.)

Text page 493; Va. Code, § 6246; Barnes' W. Va. Code, Ch. 131, § 4.

142. Decree upon the Verdict of a Jury upon an Issue out of Chancery.

In the ...... Court of the ...... of ......, ...:

A. B. and C. D.
v } In Chancery. Decree.
E. E.

This cause came on this ...... day of ......, 19.., to be heard upon the papers formerly read; upon the verdict of the jury rendered upon the issue heretofore directed in this cause and now filed herein as follows (*here insert verdict*); and was argued by counsel.

And it appearing to the satisfaction of the court that the claim of the plaintiffs, A. B. and C. D., is fair and *bona fide*, it is adjudged, ordered and decreed that the said A. B. and C. D. do recover of the said E. E. the sum of ...... dollars. (*Insert other relief granted.*)

Idem.

143a. Bill Attacking Will.

In the ...... Court of the ...... of ......, ...:

J. B.
v } In Chancery. Bill.
Susan B, et al.

To the Hon. ......, Judge of the said Court:

Your complainant respectfully showeth unto the court:

(1) That he is one of the children and heirs at law and distributees of John B., who recently departed this life possessed of real and personal property. The other children and heirs at law and distributees of John B. are Anna B., Thomas B. and William B. Your complainant believes that the said John B. died intestate. Since his death a paper writing purporting to be his last will and testament has been admitted to probate in this court, whereby he gives the chief part of his property to one Susan B., and after that the residue of his property to his children; the order admitting the said paper to probate was made on the ...... day of ......, 19.. An attested copy of the said paper is herewith filed marked exhibit "A". Marcellus M., named as executor by the said paper writing has declined to qualify as such executor.

(2) Your complainant alleges and charges that the paper writing aforesaid of which probate has been received is not the will of the decedent, Robert B. (*or, insert other reasons why the paper writing is not a will*).

In tender consideration whereof and foreasmuch, etc., your complainant prays that the said Susan S., Anna V., Thomas B. and William B. may be made parties to this bill and required to answer the same (*waive oath in Virginia*); and this merely as a step or part of this proceeding to obtain a trial before a jury; that proper process issue; that an issue *devisavit vel non* be made up and tried by a jury at the bar of this court to ascertain and try whether the said paper writing admitted to probate as aforesaid is or is not the true last will and testament of the said John B.; (*in Virginia the following additional prayers are now permitted*: that all testamentary papers of the decedent be produced before the court; that an issue *devisavit vel non* be made up and tried by a jury at the bar of this court to ascertain whether the said paper writing admitted to probate as aforesaid or whether any, or if there be more than one, which of the papers produced or how much of what may be so produced be the will of the said decedent, John B.;) that the said probate be set aside; that the said paper writing be declared and decreed not to be the last will and testament of the said John B.; and that all such other further and general relief may be afforded your complainant as the nature of the case may demand or to equity shall seem meet. And your complainant will ever pray, etc.

J. B.,
By Counsel.

Q. M., Counsel.

Text page 518; Va. Code, §§ 5247, 5259, 5260, 5261, 6246, 6247; Barnes' W. Va. Code, Ch. 77, §§ 32, 33; Ch. 131, §§ 4, 5.

143b. Bill to Set Aside a Will on the Ground of Undue Influence and Mental Incapacity.

In the ...... Court of the ...... of ....:

G. B. and W. B.
v.
M. B. B., E. B., S. B., T. B. and S. F. as Admr. c. t. a. of the estate of J. B., deceased.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your complainants, G. B. and W. B., respectfully show unto the court:

(1) That on the ...... day of ......, 19.., J. B. departed this life, leaving him surviving the plaintiffs, who are his children by his first wife, who long ago departed this life; also the defendants, M. B. B. as his widow, the said E. B., S. B. and T. B. who are his children by the said M. B. B., the decedent's second wife, and the said parties named as his children are his sole heirs-at-law.

(2) That at the time the said J. B. departed this life he owed no debts, and owned and possessed a large and valuable estate, consisting of real and personal property, amounting in value to about the sum of $.....

(3) The plaintiffs further say that on the ...... day of ...., 19.., there was admitted to probate in the Clerk's Office of the said ...... Court of ......, a paper-writing purporting to bear date on ......, ..., 19.., and which purports to be the last will and testament of the said J. B., deceased, and S. F. was appointed and qualified as administrator of the said estate with the will annexed and gave bond in the penalty of $.. with ...... as his surety, all of which will more fully and at large appear from said paper writing itself, together with the order of probate thereof, and the order appointing S. F., administrator of the said estate, copies of which are herewith filed, marked exhibit "A" and made part of this bill.

(4) That the said paper writing purports to contain devises and bequests to the said M. B. B., E. B., S. B., G. B. and W. B., as by reference to the said writing will more fully and at large appear.

(5) That the devises and bequests to the said G. B. and W. B. are quite small and insignificant when compared to what they should have and would take under the law of descents as his children, but for said paper writing; and the residue of said estate, and the principal part and the bulk thereof is given by said writing to the said M. B. B. and her three children, the said E. B., S. B. and T. B., infant defendants as aforesaid, as by reference being had to said paper will more fully appear.

(6) These plaintiffs further say that at the time when said paper writing was made, purporting to be the last will of the said B. D., deceased, the alleged testator, he, the said J. B., was afflicted with bodily and mental infirmity, and with weakness of mind and impaired memory to such an extent that the said alleged testator was not of sound or disposing mind, was incapable of understanding the extent and variety of his property, and was incapable of holding in mind the objects of his affection so as to make his devises and bequests conform to his true intent and desire.

(7) That on or about the ...... day of ......, 19.., the said J. B. who had been a widower for some years, married M. B. B., who was then twenty-eight years of age, and more than thirty years his junior; that soon after the marriage of said M. B. B. to

the said J. B. she commenced her entreaties and importunities with the said J. B. to influence him to transfer his property to her; that these importunities and entreaties continued with increased vigor from that time up to the said ...... day of ......, 19.., at which time and long prior thereto said J. B. was so worn out with said importunities and entreaties that his will had given away and yielded thereto, and on the said last named date he was entirely under the influence of the said M. B. B., his wife, and subject to her will and control; that the influence exerted over the said J. B. during the period aforesaid by the said M. B. B., his wife, in order to procure him to transfer his property to her and her children, was so strong and so great as to utterly destroy the peace of mind and overthrow the free agency of the said J. B., and to substitute her will for his. And so these plaintiffs say that the said paper writing purporting to be the will of the said J. B., deceased, was procured, obtained and made through and by the unlawful and undue influence of the said M. B. B. operating upon the mind of the said testator at the time of its execution

(8) These plaintiffs therefore further say that the said paper writing purporting to bear date on the ...... day of ......, 19..; and admitted to probate on the ...... day of ......, 19.., by the ...... court of the ...... of ......, and purporting to be the last will and testament of J. B., deceased, is not the last will and testament of J. B., deceased, nor is any part thereof the last will and testament of the said J. B., deceased.

Plaintiffs therefore pray that the said M. B. N., E. B., S. B., and T. B., and S. F. Administrator c. t. a. of the estate of J. B., deceased, be made parties defendant to this bill and be required to answer the same (*in Virginia waive oath*); that proper process issue; that an issue *devisavit vel non* be made up and tried by a jury at the bar of this court to ascertain whether the said paper writing admitted to probate as aforesaid is or is not the true last will and testament of the said J. B.; (*in Virginia the following additional prayers are now permitted*: that all testamentary papers of the decedent be produced before the court; that an issue *devisavit vel non* be made up and tried by a jury at the bar of this court to ascertain whether the said paper writing admitted to probate as aforesaid or whether any, or if there be more than one, which of the papers produced, or how much of what may be so produced be the will of the said decedent, J. B.) that the said probate be set aside; that the said paper writing be declared and decreed not to be the last will and testament of the said J. B., and that all such other further and general relief may be afforded your complainant as the nature of the case may demand or to equity shall seem meet. And your complainant will ever pray, etc.

J. B.
By Counsel.

Q. M., Counsel.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

144. Decree Directing an Issue Devisavit Vel Non.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
S. S. et al. } Decree.

This cause came on this ...... day of ......, 19.., to be heard upon the complainant's bill, and the exhibits filed therewith; the respondents' separate answers to said bill; the complainant's replication to said answers; (*and*, upon the depositions taken and filed in this cause both on behalf of this complainant and the defendants;) and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that an issue be made up and tried at the bar of this court (*or*, that the Clerk of this court be and he is hereby directed to place the said issue on the law issue docket of this court) to ascertain and determine whether that certain writing, bearing date on the ...... date of ...... 19.., and purporting to be the true last will and testament of the said J. B., deceased, which was probated, and admitted to record as and for the true last will and testament of the said J. B., deceased, on the ...... day of ......, 19.., be in fact the true last will and testament of the said J. B., deceased, (*and/or in Virginia*, whether any *or* which of the following papers, to-wit: *here describe them*, or how much thereof be the true last will and testament of the said J. B., deceased).

And it is further adjudged, ordered and decreed that the complainants be and they are hereby permitted to read before the jury their bill filed in this cause; and like permission is given to the defendants herein to read their answers filed herein for the purpose only of more clearly presenting to the jury that shall try said issue the scope thereof and to the better enable them, the said jury, to understand and determine the grounds of this contest; but said bill and answers shall not be taken and treated as evidence for or against any of the parties to this suit.

And it is further adjudged, ordered and decreed that the clerk of this court be and he is hereby directed to summon any and all witnesses desired by any of the parties to this suit to testify in their behalf upon the trial of the said issue, in the same manner and to the same extent as witnesses may be summoned upon the trial of an action at law; but the deposition of any witness heretofore taken in this cause whose attendance can not be procured before the jury that shall try said issue, because of sickness, death, or other inability to attend this court, or because he is beyond the jurisdiction of this court, may be read in evidence before the jury in the same manner and with the same effect as if said deposition had been hereafter taken on any proper ground, for the express purpose of being used upon the trial of said issue.

And it is ordered that on the trial of the said issue, the said respondents shall maintain the affirmative, and the said complainant shall maintain the negative; and that (*here name the persons*) be summoned to attend this court on the ...... day of ...... 19.., at .... o'clock as jurors to try the said issue.

And for the purpose of enabling the parties properly to prepare for the trial of the said issue, this cause is continued generally until the next term of this court.

Idem.

145a. Decree upon Verdict of Jury Devisavit Vel Non Finding for the Will.

In the ...... Court of the ...... of ......, ...:

G. B. and W. B.
v. } Decree.
M. B. B. et als.

This cause came on this ...... day of ......, 19.., to be further heard upon the papers heretofore read therein; upon the former orders and decrees made and entered therein; upon the verdict of the jury upon the issue *devisavit vel non,* heretofore warded in this cause, and now filed in the papers hereof; and upon the argument of counsel. And it appearing from the said verdict that the paper writing probated in the ...... Court of the ...... of ...... in the State of ......, on the ...... day of ......, 19.., was and is the will of J. B., deceased, (*or in Virginia set forth in detail what was found by the jury to be the will of the decedent*) it is adjudged, ordered and decreed that the paper writing in the bill and proceedings mentioned and described, a copy of which is filed with the plaintiff's bill as exhibit "A" and probated in the ...... court of the ...... of ......, and state of ......, on the ...... day of ......, 19.., be adjudged to be and is the true last will and testament of the said J. B., deceased; that the probate thereby is hereby approved as true, and the said will be solemnly declared to be duly probated. (*Or alter in Virginia according to the verdict of the jury.*)

And it is further adjudged, ordered and decreed that the defendants in this suit do recover of and from the plaintiffs, contestants of the said will, their costs in and about their defense of the said will in this behalf expended. (*add in West Virginia,* including a statute fee of ...... dollars.)

Idem.

145b. Decree upon a Verdict of Jury on an Issue Devisavit Vel Non Finding against the Will.

In the ...... Court of the ...... of ......, ...:

G. B. and W. B.
v. } Decree.
M. B. B. et als.

This cause came on this ...... day of ......, 19.., to be heard upon the plaintiff's bill; and answer of the defendants thereto, and general replication to said answer; and the court having heretofore directed an issue at law to be tried by a jury at the bar of this court to try and determine whether the writing referred to in the pleadings and purporting to be the last will and testament of J. B., deceased, is the last will and testament of the said J. B., deceased, or whether any part thereof is such last will and testament; and the jury, to-wit, L. M. and eleven other good and lawful men, having been selected and sworn to try the said issue; and the said jury having heard the evidence of the respective parties, and the argument of counsel thereon in open court, and under the direction of the court, and having found by their verdict that the said writing probated in the office of the clerk of the ...... court of the ...... of ......, and State of ......, and bearing date on the ...... day of ......, 19.., is not the last will and testament of the said J. B., deceased, nor is any part thereof the last will and testament of the said J. B., deceased; and that the said J. B., at the time of the execution and attestation of the said writing was not of sound mind and memory; nor was the said paper writing the free and voluntary act of the said J. B. at the time of its execution but the result of undue influence exerted upon him at the time the said writing was made, whereby the free agency of the said J. B., was destroyed; and the defendants having interposed a motion to set the said verdict aside and for a new trial, and the court having heard the grounds and argument of counsel in support thereof, and being fully advised in the premises, doth hereby overrule the said motion.

It is, therefore, adjudged, ordered and decreed that the said paper writing, probated in the ...... court of the ...... of ...., and State of ......, on the ...... day of ......, 19.., and purporting to be the last will and testament of the said J. B., deceased, is not, nor is any part thereof, the true last will and testament of the said J. B., deceased; and that the probate thereof in the ...... Court of the ...... of ......, and the proceedings thereunder be, and the same are hereby set aside, and the same are hereby declared to be null and void.

It is further adjudged, ordered and decreed that the defendants (*naming them*) do pay unto the plaintiffs their costs in and about the prosecution of their contest in this behalf expended.

Idem.

XXII. Forms in Proceedings for the Transfer of Property of Persons under Disabilities

(See also XXXII, Judicial Sales.)

146a. Bill (or Petition) by Guardian for the Sale, Lease, or Incumbrance of the Land of a Person under Disability.

In the ...... Court of the ...... of ......, ...:

A. B. Guardian of C. D.
v. } In Chancery. Bill.
C. D., M. D, G. D. and S. D.

To the Hon. ......, Judge of the said Court:

Your complainant, A. B., guardian of C. D., respectfully represents:

(1) That he is the guardian of C. D., an infant child of K. D. and M. D.; that he was appointed and qualified as guardian of the said infant in your Honor's court on the ...... day of ...., 19.., as will appear from a certificate of the clerk of the said court showing the same, herewith filed, marked exhibit "A" and made a part of this bill; and,

(2) That the said infant is of the age of ...... years; and,

(3) That the said infant is the owner in *fee simple* of the following real estate, namely: (*here describe the property*); that the said infant is the owner of the following personal property, namely: (*here describe it*); that the said infant derived the said real and personal property by (*here state how*); and that the said real and personal property is all the estate, real and personal, belonging to said infant; and,

(4) That the following facts are calculated to show the propriety of said sale (*or* lease. *Here state all the facts, including the manner in which it is proposed to lease the property*); and,

(5) That the interests of the said infant will be promoted by the sale (*or,* lease) of the aforesaid real estate, and that the rights of no person will be violated by said sale; and

(*In West Virginia insert if the relief is sought by petition un-*

der § 12, Chapter 83, Barnes' W. Va. Code, and not by bill: That ten days' notice has been given to C. D., M. D., G. D. and S. D. of your petitioner's intention to apply to this court for the relief sought by this petition.)

(6) That the heirs and distributees of the said infant, if he were dead, would be M. D., G. D., and S. D; and that the said C. D., M. D., G. D. and S. D. are all the persons who are or can be in any way interested in this suit; (*or if there are any other persons interested, set forth their interest*);

In consideration whereof, and forasmuch as your complainant is remediless in the premises, save in a court of equity, your complainant prays that the said C. D., M. D., G. D., and S. D., may be made parties defendant to this bill; that a guardian *ad litem* be appointed to defend the rights of the said infant, D. D; that M. D., G. D. and S. D., the adult defendants, and C. D., and the said guardian *ad litem,* be required to answer the allegations herein contained, (*in Virginia,* but answer under oath is hereby waived); that the said infant may answer by his guardian *ad litem* to be assigned to him, who (as well as the said infant, if over fourteen years of age), shall answer the said bill on oath in proper person; that the aforesaid real property may be decreed to be sold and the proceeds invested as the court shall direct; *or,* leased, *as set forth above;* that all proper allowances and counsel fees may be made in this suit; that all proper accounts may be taken, inquiries directed, and orders entered; and that your complainant may have all such further and other and general relief in the premises as the nature of his case may require, or to equity shall seem meet.

A. B., Guardian of Complainant.

J. C. Counsel.

(*Append affidavit as in Form 32.*)

(*If it is desired to incumber the land for the purposes authorized by statute, this same form with appropriate changes may be used. So may it be used if the suit is instituted by an adult against an infant, and affecting the infant's property. If the person under disability be insane, the suit is in the name of the Committee and the first paragraph should recite that the person un-*

der disability has been declared insane, the committee appointed, etc. The remaining allegations are similar to those given above.)

Text pages 534, 541; Va. Code, §§ 5335, 5347, 6129; Barnes' W. Va. Code, Ch. 83.

146b. Petition for the Investment of Infants' Funds under the Custody of the County.

In the ...... Court of the ...... of ......, ...:

K. K. et al.
v.
R. K. et al. } In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your petitioners, respectfully show unto the court:

(1) That by decree in this cause of K. K. v. R. K, the parts of the proceeds of the sale of house and lot No. ...... belonging to C. K., X. K., and T. K. were paid to them, said shares being each the sum of ...... and that there were reserved by the Court two shares each of ...... a total of ...... and that one of said shares so reserved belongs to the persons representing now the estate of B. K., deceased, and the other to the persons now representing the estate of S. K. deceased.

(2) That therefore as shown by the papers in the cause one of said shares belongs to M. K. and N. K. subject to the curtesy right of O. K. their father, in ...... thereof, he having assigned ...... of his curtesy right in said real estate to his two children; and that the other of said shares belongs to L. K. and P. K. subject to the dower right of their mother A. K.

(3) That the said O. K. did qualify in the ...... Court of ...... on ...., 19....., as the Guardian of said M. K. and N. K. and he is still their Guardian.

(4) That said A. K. did qualify in the ...., 19...., as Guardian of L. K. and P. K. and she is still their Guardian.

(5) That duly authenticated Certificates of the qualifications of said two Guardians are hereto annexed as a part of this petition.

(6) That your petitioners desire that as large a part as possible of said fund of ...... may be invested in six per centum mortgage notes secured by first deed of trust upon real estate of ample value so as to yield them a larger income.

(7) That ...... Company of ......, holds and is willing to sell at par plus accrued interest a note marked No ...... dated ......, for ...... Dollars drawn by ...... payable to bearer at ...... Bank of ...... on ...., 19.., with ...... coupons of the value of ...... each attached signed by said ...... for the semi-annual interest to accrue on said note to maturity which note is secured by first deed of trust dated ......, from A. B. and S. B. his wife, to ...... Company, Trustee, recorded ......, 19.., in Deed Book No. ...... in the Clerk's office of the ...... Court of ...... County conveying the following real estate to-wit:

(8) That the said Deed of Trust is in usual form and requires fire-insurance in the sum of ...... Dollars for the protection of the note holder and that ...... Company holds the following fire-insurance policies on the building on said land with the usual standard mortgagee loss clause attached making loss payable to the Trustee as its interest may appear to-wit:......

(9) That there is on said lot of land a handsome new house occupied by said A. B. as a residence and that on ...., 19.., said property was appraised by M. N. for the purposes of said loan of ...... Dollars as follows:

Rental Value ....per annum.
Value of Land alone ....
Value of Building alone ....
What would property as a whole sell for on usual terms........
What would it bring as a whole if sold for cash......
Will property increase or decrease in value ......

(10) That the title to said property has been examined by ...... corporation through B. T. and certificate of title to said property issued by said Corporation under date of ......, 19.., which shows the clear fee-simple title to said property to be vested in said A. B. subject only to said first Deed of Trust dated ......, to ...... Company, Trustee, to secure said sum

of ...... Dollars. Said ...... Company also holds waivers of Mechanics' Liens from all persons that were engaged in the construction of said house which has been completed more than sixty days.

(11) That said ...... Company is willing upon payment to it by the Court of the principal sum of ...... Dollars plus interest accrued thereon from ......, to date of purchase to sell to the Court for its account in this cause said ...... Dollar Note dated ...., 19.., drawn by A. B. with all interest coupons attached and to hold for the credit of the Court and subject to its order in this cause the principal note with coupons attached, also said Deed of Trust, Abstract of Title and Insurance Policies and all other papers connected with said loan and to issue its receipt to that effect, and will see to it that said insurance is not less than ...... Dollars is kept in force so long as the debt secured remains unpaid and also that the taxes on the property are regularly paid during the same period.

(12) Said ...... Company will also if desired pay from the income the Fiduciary Tax on the funds and securities held by the Court to the credit of this cause so that the Court may be relieved of that duty and will also if desired disburse the income from said ...... Dollar note as the Court may direct and will upon the maturity of said ...... Dollars collect the principal and deposit it in same Bank to the credit of the Court in this cause or dispose of the same as the Court may direct.

(13) Your petitioners desire that the Court will purchase said ...... Dollar note and will make an order to that effect and that it will provide that said ...... Company shall hold said note and all other papers connected with said loan subject to the order of the Court and shall collect and disburse said income so that O. K. as Guardian of his two children may receive ...... thereof, ... thereof, ... in his own right ...... thereof, and A. K. may receive as Guardian of her two children ...... thereof, in her own right ...... thereof.

(14) Your petitioners have had ......, who is ...... of ...... Company to verify in writing by a letter hereto attached that the matters herein stated with regard to said ...... loan

are correct and they herewith present to the Court for its inspection (but not to be filed unless so ordered) the original of said Deed of Trust dated ......, the said Certificate Title, and said Insurance Policies.

WHEREFORE your petitioners respectfully pray that this their petition may be granted.

O. K., in his own right and as guardian of his two children.
A. K., in her own right and as guardian of her two children.
Q. M., Counsel.

Idem.

147a. Answer of Adult Defendants to Bill by Guardian to Sell Infant's Land.

In the ...... Court of the ...... of ......, ...:

A. B. Guardian of C. D.
v. } In Chancery. Answer.
C. D., M. D., G. D. and S. D.

The joint and separate answers of M. D., G. D., and S. D. to a bill of complaint filed against them and C. D., an infant under the age of twenty-one years in the ...... Court of ......, by A. B., guardian of C. D.

These respondents, reserving to themselves the benefit of all just exceptions to the said bill of complaint, for answer thereto, answer and say:

That they believe the statements in said bill of complaint to be true; that they do not object to the sale of the land as prayed for in the said bill; and that they concur in the prayer of the said bill.

And how, having fully answered the complainant's bill, these respondents pray to be hence dismissed with their reasonable costs by them in this behalf expended.

M. D.
G. D.
Respondents.

(*Append if necessary affidavit as in Nos. 32. The answers of adult defendants and guardians ad litem in suits to sell lands of other persons under disabilities do not differ from the answers* *in suits to sell, etc., infants' properties except to properly describe the complainant).*

Idem.

147b. Answer of Guardian Ad Litem in Proper Person.

In the ...... Court of the ...... of ......, ...:

A. B. Guardian of C. D.
v. } Answer.
C. D., M. D. and S. D.

The separate answer in proper person, of B. T., guardian *ad litem* appointed to defend C. D. in this suit, in proper person, to a bill of complaint filed against C. D., M. D., G. D., and S. D. in the ...... Court of ...... by A. B., guardian of C. D.

This respondent, reserving to himself the benefit of all just exceptions to the said bill of complaint, for answer thereto, answers and says:

That he is the guardian *ad litem* appointed to defend C. D. in this suit; that he knows nothing as to the truth or falsity of the statements in the said bill of complaint; and that he prays full protection of the court for C. D., the said infant defendant.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

B. T., Guardian *ad litem* for C. D.,
Respondent.

J. C., Counsel.

Taken, sworn to and subscribed before me, ... a notary public of and for the ...... and state aforesaid, in my ...... aforesaid, the ...... day of ......, 19..

....
Notary Public.

Idem.

147c. Answer of Guardian Ad Litem in Proper Person (Another Form).

In the ...... Court of the ...... of ......, ...:

A. B. Guardian of C. D.
v. } In Chancery. Answer.
C. D. M. D., and S. D.

The answer in proper person of B. T., guardian *ad litem* of the infant defendant, C. D., duly appointed to defend his interests in this suit, to a bill of complaint filed against such infant defendant and others, in the ...... Court of the ...... of ......, by A. B., guardian of said infant.

This respondent, for answer to said bill, says that he has carefully read the same, and is fully informed as to the purposes thereof; that, as a resident of the ...... of ...... for many years, respondent is familiar with all of the real property mentioned in the bill, and also with the general circumstances of the infant defendant, which he believes to be truly stated in the bill. He concurs in the opinion of the guardian, expressed in the bill, that the property therein described should be sold, and the proceeds reinvested in some safe, income-producing securities; and that such sale and reinvestment would clearly promote the interests of the infant owner, and, so far as he knows, will not violate the rights of any other persons.

And, having fully answered he prays to be hence dismissed, with his reasonable costs and charges.

B. T.
Guardian ad litem.

(*Append personal affidavit of guardian ad litem as in Form 147b.*)

Idem.

147d. Answer of Infant by Guardian Ad Litem.

In the ...... Court of the ...... of ......, ...:

A. B. Guardian of C. D.
v. } In Chancery. Answer.
C. D. et als.

The answer of C. D., infant under the age of twenty-one years, by A. B., his guardian *ad litem,* appointed by the court, as a competent and discreet attorney at law to defend his interests in this cause, to a bill of complaint filed against him and others, in the ...... Court of the ...... of ......, by A. P., guardian of this respondent.

This respondent, by his said guardian *ad litem,* for answer to said bill, says that he is an infant of tender years, and therefore incapable of knowing or defending his rights in the premises. He therefore submits his interests to the protection of the court, and prays that no decree may be rendered to his prejudice.

And having fully answered he prays to be hence dismissed.

C. D.

By A. B., *Guardian ad Litem.*

(*Append affidavit as in Form 147b.*)

Idem.

147e. Answer of Infant Defendant over Fourteen Years of Age.

In the ...... Court of the ...... of ......, ...:

A. B. Guardian of C. D.
v.
C. D., M. D., G. D. and S. D. } Answer.

The separate answer of C. D., an infant under the age of twenty-one years, but over the age of fourteen years, in proper person, to a bill of complaint filed against him and M. D., G. D., and S. D. in the ...... Court of ...... by A. B. guardian of C. D.

This respondent, reserving to himself the benefit of all just exceptions to the said bill of complaint, for answer thereto, answers and says:

That he is fifteen years of age; that by reason of his tender years he knows nothing of the allegations of the said bill, but so far as he does know, he believes the same to be true; that he sees no reason why the prayer of the bill should not be granted; that he accordingly concurs in the prayer of the said bill, but that he commends himself and his rights and interests to the protection of the court, and prays that no decrees may be entered that will tend to his prejudice.

And now, having fully answered the complainant's bill, this respondent prays to be hence dismissed with his reasonable costs by him in this behalf expended.

C. D., Respondent.

J. C., Counsel.

(Append personal affidavit of the infant as in Form No. 147b.)

148. Decree of Reference.

In the ...... Court of the ...... of ......, ...:

A. B. Guardian of C. D.
v.
C. D., M. D., G. D. and S. D. et als. } Decree.

This cause, by consent of all the parties by counsel, came on this day to be heard upon the complainant's bill, verified by his affidavit thereto, and filed by leave of court, and the exhibits filed therewith; the separate answer of the infant respondent, C. D., by his guardian *ad litem,* to said bill; the separate answer, on oath in proper person, of B. T., the said guardian *ad litem,* to said bill; the separate answer, on oath, in proper person, of C. D., the said infant, who is over fourteen years of age, to said bill; the joint and separate answers of M. D., G. D., and S. D. to said bill; the complainant's replication to the said several answers; upon the bill taken for confessed as to the defendants, E. F., G. H., and M. M. upon whom process appears to have been duly served, and they failing to appear, and answer or otherwise respond to said process; (on the bill set for hearing as to the nonresident defendants, X. Q. and Z. Y., against whom the plaintiff appears to have proceeded by order of publication as required by law, and they still failing to enter their appearance herein;) and was argued by counsel; (and, by consent of all the parties by counsel, is docketed and set for hearing).

On consideration whereof, the court doth adjudge, order, and decree that this cause be referred to one of the commissioners of this court, who is directed to inquire and report to the court as follows:

(1) All the estate, real and personal, belonging to C. D., the infant respondent, his share or interest therein, where situated. and what is its *fee simple* and annual value.

(2) Whether the interests of the said C. D. will be promoted by the sale of the real estate mentioned in the complainant's bill, or any part thereof, and an investment of the proceeds of sale in other property.

(3) Whether the rights of any person will be violated by such sale and investment.

(4) Who would be the heirs and distributees of the said C. D. if he were dead, and who are all the persons who are or can be in any way interested in this suit, and whether all such persons are properly before the court in this cause.

(5) What will be a fair compensation to be allowed to the counsel for the complainant out of the proceeds of sale of the infant's land for their services in instituting and conducting this suit.

Which said inquiries the said commissioner shall make, after first giving notice of the time and place thereof to all parties, or their counsel, and report the same to the court, along with any matter specially stated deemed pertinent by himself, or which may be required by any person intersted to be so stated.

Idem; text page 542.

149a. Report of Commissioner.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Report of Commissioner.
C. D. et als.

OFFICE OF COMMISSIONER......

To the Hon. ...... Judge of the ...... Court of the ......:

In pursuance of a decree of your Honor's court, entered in the suit of which the above is the general style, on the ...... day of ......, 19.., I gave notice to the parties that on the ...... day of ......, 19.., at 11 o'clock A. M., and at my office aforesaid, I should proceed to execute the said decree; the said notice, with service of the same acknowledged by the counsel for the complainant and the adult defendants and the guardian ad litem of the infants is herewith returned.

I attended at the time and place so appointed and in the presence of ...... counsel for the complainant and the adult defendants, and of Mr. ...... the guardian ad litem of the infant defendants, I took the depositions of ...., ..., ...

The said depositions are herewith returned, and after consideration of the same, together with the pleadings in the cause, I respectfully,

REPORT:

1. The infant defendants ......, ..., are possessed of or entitled to the following property, viz:

(1) Real Estate, (*here insert description of property*).

(2) Personal Estate, (*here insert description of property*).

Their shares or interest therein are ...... each. The fee-simple value of the same is $......, and its annual value is $...... gross, or $...... net after the payment of taxes, insurance, agents' commissions and repairs.

2. The interests of the said infants will be promoted by a sale of the said real estate and an investment of the proceeds thereof in other property.

3. The rights of no person will be violated by such sale and investment.

4. ......, ..., ... would be the heirs-at-law or distributees of the said infants if they were dead. Such persons are properly before the court in this cause.

5. I consider that the sum of $...... would be reasonable and fair compensation to be allowed Messrs. ...... the counsel for the complainant and the adult defendants, for their services in instituting and conducting the proceedings in this suit through its successive stages.

Respectfully submitted,

Commissioner's Fee, $......

..........Commissioner.

Idem.

149b. Report of Commissioner on Investments.

In the ...... Court of the ...... of ......, ...:

K. K. et al.
v. } In Chancery. Report of Commissioner.
R. K. et al.

To the ...... Court of ......:

The undersigned as Special Commissioner appointed by decree of ...., 19.., to perform the duties thereby imposed upon him begs to make this report to the Court as to his action under said Decree.

He did receive from Special Commissioner O. R. the check for ...... in favor of ...... Company mentioned in said Decree and he did deliver it to said ...... Company upon the execution and delivery by it to him a receipt dated ...., 19.., which is herewith returned and which conforms with requirements of this Decree. A copy of said receipt is hereto attached for the convenience of persons reading this report inasmuch as the original receipt will be filed away by the Clerk for preservation.

Respectfully submitted this ......
D. M.
Special Commissioner.

RECEIPT FILED WITH REPORT OF COMMISSIONER.

This is to certify that we have received of D. M. Special Commissioner of ...... Court of ...... in suit of K. K. et al. v. R. K. et al., Decree of ...., 19.., Court Check for ...... Dollars in payment of note dated ...., 19.., drawn by A. B. for ...... Dollars payable to bearer on ...., 19.., at ...... Bank of ...... with ten coupons attached for ...... Dollars each, drawn by said A. B., payable semi-annually for the semi-annual interest to accrue on said Dollar note to maturity, said note being secured by Deed of Trust dated ...., 19.., to ...... Company, Trustee, recorded in Clerk's Office of ...... Court of ...... in Deed Book No. ...... Page ...... Which note for ...... Dollars we hold subject to the order of the Court in said cause and subject to the conditions embodied in said Decree as follows: (*here set forth provisions of decree*).

...... Company.
By ......

150a. Decree for Sale of Infant's Lands.

In the ...... Court of the ...... of ......, ...:

A. B., Complainant.
v.
C. D., M. D. et als, Defendants. } In Chancery. Decree.

This cause came on this ...... day of ......, 19.., to be again heard on the papers formerly read and on the report of the Commissioners dated the ...... day of ......, 19.., and filed on ......, 19.., and on the deposition of witnesses returned with said report; (*if exceptions have been taken, insert*: and exceptions thereto) to which report there is no exception taken, the counsel for the adult parties and the guardian *ad litem* for the infant defendants, by endorsement on said report having waived the ten days for exception, and was argued by counsel.

On consideration whereof, it being clearly shown from said report and the evidence returned therewith, independently of any admissions in the answers, that the interest of the infant defendants will be promoted by a sale of the real estate hereinafter mentioned and a re-investment of the proceeds thereof in other property, (*or approve other relief prayed in bill or petition*) and the court being of opinion that the rights of no person will be violated thereby, (*if exceptions have been overruled, insert*: the court doth adjudge, order and decree that the said exceptions of ...... to the report of the commissioner be and the same are hereby overruled) and the court doth approve and confirm said report; and doth adjudge, order and decree that ......, ..., ..., who are hereby appointed special commissioners for the purpose, any one of whom may act, do, after having advertised the time, place, and terms of sale for ...... successive times in some newspaper published in the City (*or* County) of ...... proceed to sell in one or more parcels as the commissioners shall see fit, at public auction, the land in the bill and proceedings mentioned, viz: .... upon the terms of one-third in cash, and the residue in three equal instalments, payable respectively at six, twelve and eighteen months from the day of sale, the credit instalment to be evidenced by notes of the purchaser, with six per centum per annum interest from the day of sale added, and the title of the property retained as security for the said notes until the whole of the purchase money is paid and a conveyance directed by the court. And the said commissioners are directed to deposit the said notes and the cash instalment in the ...... bank of ......, to the credit of the court in this cause, and to report their proceedings hereunder to the court, returning therewith a certificate of deposit of such notes and cash *(or state other terms.)*

But the said commissioners shall have no power to execute this decree until they or the one or ones who act shall enter into bond with sufficient security in the clerk's office of this court, in the penalty of $ ......, and conditioned for the faithful discharge of their duties hereunder.

Idem; text page 543.

150b. Decree Authorizing Investment.

In the ...... Court of the ...... of ......, ...:

K. K.
v. } In Chancery. Decree.
R. K.

This .... day of ......, 19.., came O. K. in his own right and as guardian of M. K., and N. K., and A. K. in her own right and as guardian of her two children L. K. and P. K., and by leave of Court filed their petition in this cause: and thereupon this cause came on this day to be again heard upon the papers formerly read and upon the said petition this day filed; and was argued by counsel.

Upon consideration whereof and it appearing that there is now in to the credit of the Court in this cause the principal sum of ......, which are the two shares each of B. K. and S. K. remaining after the payment of the three shares mentioned in the Decree of ...., 19.., and that one of said shares belongs to the infants M. K., and N. K. subject to the curtesy right of their father O. K. in ...... thereof and that the other of said shares belongs to the infants L. K. and P. K. subject to the dower of their mother A. K.; and it appearing from said petition that the said petitioners desire that the Court invest so much of said principal sum of ...... as may be necessary in the purchase as an investment of a note dated ......, drawn by ...... in the sum of ...... Dollars, payable to bearer at the ...... Bank of ...... on ......, with ten coupons of ...... Dollars each attached drawn by said ...... for the semi-annual interest to accrue on said note to maturity, which note is secured by first Deed of Trust dated ...., 19.., recorded the same day in Deed Book No. ......, p.., in the Clerk's Office of ...... Court of ...... from said A. B. and his wife to .... Company as Trustee conveying certain real estate in ...... and the Court being satisfied from said petition and the documents produced therewith for the inspection of the Court that the investment so desired by the petitioners is safe and desirable doth grant the prayer of the petitioners and doth make said investment as hereinafter set forth:

It appearing that interest on said note for ...... Dollars from ......, 19.., to ......, 19.., amounts to ...... the Court doth order that O. R. who is hereby appointed a Special Commissioner for the purpose do draw his check with an attested extract hereof on the fund to the credit of the Court in this cause in ...... Bank Company in favor of ...... Company of .... for the Sum of ...... Dollars, which is in payment of said note for ...... Dollars and all interest coupons attached together with interest accrued thereon from ......, to ......, amounting to said sum of ...... Dollars.

The Court doth direct said ...... Company to hold the said note for ...... dated ...., 19.., drawn by A. B. subject to the order of the Court in this cause and upon the maturity of said note to collect the principal and to deposit the same to the credit of the Court in this cause in the ...... Bank of ...... and to report that fact to the Court returning with its report a certificate of said deposit and that in the meantime it do collect said interest coupons as they mature and after first paying from said income any fiduciary taxes chargeable against the funds and securities to the credit of the Court in this said suit it do pay until the further order of the Court the residue of said income as follows: To O. K. as Guardian of M. K. and N. K. ...... thereof, to O. K. in his own right ...... thereof, to A. K. in her own right ...... thereof and to A. K. as Guardian of L. K. and P. K. the remaining ...... thereof provided however that out of the first instalment of said interest that may be paid it do deduct the sum of ...... being the amount of the aforesaid accrued interest on said note for ...... Dollars and do deposit the same to the credit of the Court in cause in said ...... Bank of ...... in order to restore that amount to the principal of the fund and do take a certificate for said deposit and do return it to the Court with a report of its action in this respect and the Court doth further direct said ...... Company to hold subject to the order of the Court in this cause all the papers relating to said loan of ...... Dollars mentioned in said petition.

Said Special Commissioner O. R. shall deliver said check for ...... Dollars to M. D. as a Special Commissioner of the Court who shall deliver the same to said ...... Company upon the delivery to him by said ...... Company of its receipt stating that it holds said ...... Dollar note subject to the order of the Court in this cause and that it is subject to the directions of the Court as embodied in this Decree and said Special Commissioner D. M. shall make report to the Court of his action hereunder returning with his said report the said receipt of ...... Company.

Idem.

XXI. Orders Relating to Costs

151. Order Requiring Non-Resident to Furnish Security for Costs.

In the ...... Court of the ...... of ....:

A. B.
v. } In Chancery. Order.
C. D.

This day the defendant suggested the non-residence of the plaintiff and demanded security for costs, whereupon it is ordered that the said plaintiff deposit with the clerk of this court to the credit of this cause the sum of $...... as such security.

Text page 532; Va. Code, § 3519; Barnes' W. Va. Code Ch. 138, § 2.

152. Order Dismissing Bill for Plaintiff's Failure to Give Security for Costs.

In the ...... Court of the ...... of ......, ...:

A. B., et als.
v. } In Chancery. Order.
C. D.

This cause came on this ...... day of ......, 19...., to be heard upon the suggestion on the record of this court, at a former term hereof, by the defendant, of the non-residence of the plaintiff, and upon the proof filed on behalf of the plaintiff, A. B., as to his residence in the State as well as the affidavits filed as proof by the defendant, as to his non-residence. Upon consideration whereof the court is of the opinion that the preponderance of proof is that the said A. B. is a non-resident of this state, and that he is not a resident of the said state. And it not being proved in any way that any of the plaintiffs in this cause are residents of the state of ......, and the plaintiff not having given security for costs, as required by law, either before this court or the clerk thereof, within sixty days from the time of the said suggestion upon the records of this court, nor upon any day of this term, and the last day of this term of this court having arrived, it is adjudged, ordered and decreed that this suit be and the same is hereby dismissed, but without prejudice to the rights of the plaintiffs to institute another suit for the same cause of action. It is further adjudged, ordered and decreed that the defendants recover of the plaintiffs their costs about their suit in this behalf expended.

Idem. Carlin's Hogg's Equity Procedure.

XXIII. Forms Relating to Awards

153. Decree Submitting Cause to Arbitration and Making the Same a Rule of Court.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. } In Chancery. Decree.

Upon motion of the parties to this suit by their counsel, and upon reading the articles of agreement signed by the said parties, stipulating for a submission of said cause to arbitration, and having inspected the affidavits of ...... and ......, filed herein, proving the due execution of the said articles of agreement and submission; and upon hearing counsel for the respective parties and reading the said affidavits filed herein; it is adjudged, ordered and decreed that the said agreement stipulating for the submission of said cause to arbitration be filed herein and made part of the record in this cause; that the same be made a rule of court, to be observed and performed by all the parties thereto, according to the tenor and true meaning thereof.

Text page 545; Va. Code, §§ 6159-6161; Barnes' W. Va. Code, Ch. 108, §§ 1-3. Adapted from Carlin's Hogg's Equity Procedure.

154. Decree Filing Award of Arbitrators, Making Allowances to Them and Directing Summons to Show Cause against Said Report.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. } In Chancery. Decree.

This day came the parties to this cause by their respective counsel and presented to the court the award made by the arbitrators (*here name the said arbitrators*) selected by said parties under an order heretofore entered in said cause submitting the same to arbitration, and asked leave to file said award, which is accordingly done. And thereupon the arbitrators filed their affidavits in this cause, from which it appears that a reasonable compensation to each of said arbitrators for their services while acting as such arbitrators would be the sum of ...... dollars; and it is therefore ordered that each of said arbitrators be, and he is, hereby allowed the sum of ...... dollars for his services, to be taxed as part of the costs of this suit.

It is further ordered that the clerk of this court do issue a summons to be served on all the parties to this suit, returnable here on the first day of the next term of this court to show cause, if any they can, why the said award should not be entered up as the decree of this court in this cause.

Idem.

155. Decree Entering up Award as the Decree of the Court.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Final Decree.
C. D.

This day came the parties to this suit by their respective counsel, and it appearing to the court that the summons to show cause why the award made herein should not be entered as the decree of the court, heretofore directed, was issued and properly served, which with its return is now filed in the papers of this cause; and this cause now coming on to be heard upon the bill and its exhibits; upon the former orders and decrees made and entered herein; upon the said award, and the said summons duly issued and served; and was argued by counsel. And it appearing from said award that the defendant, C. D., is required to pay to the plaintiff, A. B., the sum of ...... dollars, it is therefore adjudged, ordered and decreed that the said A. B. do recover of and from the defendant, C. D., the sum of ....dollars, with interest thereon from this date until paid and the costs of this suit, including the costs of the arbitration made in this cause.

Idem.

XXIV. Forms in Suits to Set Aside Fraudulent and Voluntary Conveyances

156a. (Va.) Memorandum of Lis Pendens in Suit to Avoid a Voluntary or Fraudulent Conveyance.

Know all men that I, A. B., plaintiff in the hereinafter styled cause, do give notice of *lis pendens*, by this memorandum filed in the Clerk's Office of the ...... Court of ...... on the .... day of ......, 19...., which sets forth as follows: There is now pending in the ...... Court of ...... a certain cause, the title of which is A. B. v. C. D.; the general object thereof is to set aside as fraudulent and void a certain deed (*or other conveyance*) made by C. D., dated the .... day of ......, 19...., and recorded in the ...... Court of ......, in Deed Book ......, page ......, and subject the property therein mentioned to the payment of the plaintiff's claim; the amount of the claim asserted is ...... dollars; the description of the property is as follows: (*here describe the property*), which said property is more particularly described in the deed (*or other conveyance*) aforesaid, to which reference is made for a more detailed description; and the name of the person whose estate is intended to be affected thereby is C. D.

Witness my hand this ...... day of ......, 19.....

A. B.

State of Virginia,

County (*or* Corporation) of ......, to-wit:

I, Y. Z., a notary public in and for the county (*or* corporation) aforesaid in the State of Virginia, do certify that A. B., whose name is signed to the writing above, bearing date on the ...... day of ......, 19...., has acknowledged the same before me in my county (*or* corporation) aforesaid. My term of office expires on the ...... day of ......, 19.....

Given under my hand this ...... day of ......, 19.....

Y. Z., Notary Public.

I, ..., Clerk of the ...... Court of ...... in which the above mentioned cause of A. B. against C. D. is pending, do hereby authenticate the above memorandum according to the provisions of section 6469 of the Code of Virginia and declare that the facts stated in said memorandum are correct as shown by the record in the said cause.

................................Clerk.

(*This form may be used in attachment proceedings.*)

Va. Code, §§ 5186, 5204-5410, 6469.

156b. (W. Va.) Memorandum of Lis Pendens in Suit to Avoid a Voluntary or Fraudulent Conveyance.

Know all men that I, A. B., plaintiff in the hereinafter styled cause, do give notice of *lis pendens,* by this memorandum filed with the clerk of the County Court of ......, West Virginia, on the ...... day of ......, 19...., which sets forth as follows: There is now pending in the ...... Court of ...... a certain cause the title of which is ...... v. ......; the names of all the parties to the said suit are: (*here insert names of all parties*); the description of the property to be effected is as follows: (*here insert description of property by metes and bounds and reference to deeds*); the nature of the lien, right or interest sought to be enforced against the said property is as follows: (*here insert lien, right or interest*); the name of the person whose estate is intended to be affected is ......

Witness my hand this ...... day of ......, 19....

A. B.

Barnes' W. Va. Code, Ch. 139, §§ 14 and 15.

157a. Bill Impeaching a Deed for Fraud.

In the ...... Court of the ......, of ......, ...:

A. B.
v. } In Chancery. Bill.
C. D. and E. F.

To the Hon. ...... Judge of the said Court:

Your orator, A. B., respectfully represents:

(1) That at the ...... term, 19...., of the ...... court of the ...... of ......, your orator recovered against the said C. D., a judgment for the sum of $......, with interest from the ...... day of ......, and $...... costs (*or,* that before the ...... day of ...... the said C. D. was indebted to your

orator in the sum of $......, with interest from ......), which said sum of money yet remains unpaid;

(2) Your orator further avers that the said C. D. on the ...... day of ...... executed to E. F. a deed, whereby he conveyed to the said E. F. the following property, to-wit: (*here describe it, and if the deed is in trust set forth its object*), which said deed was admitted to record in the clerk's office of the ...... court of the ...... of ......, on the ...... day of ......, 19...., and a copy of which is filed herewith marked "Exhibit A" and asked to be made a part of this bill; and

(3) Your orator further avers and charges that the said deed was not upon a consideration deemed valuable in law, but was executed with intent to hinder, delay and defraud the creditors of the said C. D., and especially your orator.

Wherefore, your orator prays that the said C. D., and E. F. (*and the creditors named in the deed, if any, and any other lien creditors of C. D. who are known*), be made parties defendant to this bill, and be required to answer the same on oath (*or waive oath*); that the said deed be wholly avoided and set aside (*or* that accounts be taken, *if the suit is to be carried on as a general creditors' bill, and the ordinary convention of creditors and ascertainment of debts and priorities must be prayed as in Form No. 41*); and the land or so much of it as may be necessary to satisfy the obligations of your orator, be sold, should the rents and profits thereof not pay your orator's judgment in five years; or otherwise, that the land be rented out, and in either event, that your orator's and such other debts, as may be binding upon the said property, may be paid; and that all such other, further and general relief as in the premises may be just and right may be granted. And your orator will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

(*If a consideration is named in the deed, the grantee should also be charged with knowledge of the fraudulent intent.*)

Text pages, 560, 591; Va. Code, § 5184-5186; Barnes' W. Va. Code Ch. 74.

157b. (W. Va.) Bill to Set Aside a Conveyance or Transfer So Far as the Same Creates a Preference.

In the Circuit Court of ...... County, West Virginia.

A. B.
v. } Bill.
C. D., et als.

To the Hon. ...... Judge of the said Court:

Your orator, A. B., who sues on behalf of himself and all other creditors of C. D., who shall come in and contribute to the costs of this suit, respectfully represents:

1. That on the ...... day of ......, 19...., C. D. owned a large farm in ...... County, West Virginia, which had been deed to him by ...... by deed dated the ...... day of ......, 19...., of record in the Clerk's Office of the County Court of ...... County, which said farm (*here describe property*);

2. That on the said ...... day of ......, 19...., your orator loaned the said C. D. a large sum of money, to-wit: the sum of $......, and accepted as evidence of the said loan the negotiable note of the said C. D., payable six months after date with interest. A true copy of the said note is filed herewith marked "Exhibit A" and asked to be read as part hereof;

3. That on the ...... day of ......, 19...., and after said note had become due and payable, the said C. D. executed his deed of trust, now duly of record in the Clerk's Office of the county court of said county, conveying a certain tract of land therein described to the said L. K., the trustee therein named, for the purpose of securing the payment of two promissory notes therein described, one of which is payable to the defendant E. F., for the sum of $......, and the other to the defendant G. H., for the sum of $......, all of which will more fully and at large appear by reference to said trust deed itself, an attested copy of which is herewith filed marked "Exhibit B," and made part of this bill;

4. Your orator further sheweth that he is informed and believes and so alleges the fact to be that at the time said deed of trust "Exhibit B" was executed, he, the said C. D., was not only

indebted to the said plaintiff as hereinbefore mentioned. as well also as to the said E. F. and G. H. but in large sums of money to other parties, unsecured creditors of the said C. D., and that all of the said indebtedness hereinabove mentioned has not been paid, nor has any part thereof been paid, as this plaintiff is informed and believes and so avers;

5. Your orator further sheweth that at the time of the execution of the said deed of trust, a copy of which is filed as "Exhibit B" herewith, the said C. D. was, and now is, insolvent; that the said C. D. has only about ...... hundred dollars worth of personal property, and that the said land is not worth to exceed ...... dollars, and cannot be sold for a greater amount than the said sum of ...... dollars, while the indebtedness of the said C. D. is far in excess thereof, amounting, as your orator is informed and believes and so alleges, to about the sum of ...... dollars;

6. Your orator further sheweth that the said C. D. executed the said deed of trust for the purpose of attempting to create a preference in behalf of the said E. F. and G. H., and that if the said deed of trust is permitted to stand it will operate to create a preference in favor of the said E. F. and G. H., as against your orator and the other creditors of the said C. D., contrary to the statute in such cases made and provided.

Your orator therefore prays that C. D., E. F., G. H. and L. K., Trustee (*here name other parties*) may be made parties defendant to this bill and required to answer the same; that proper process issue; that the said deed of trust, bearing date on the ...... day of ......, 19...., as aforesaid, a copy of which is filed as "Exhibit B" with this bill, may be set aside and held for naught, so far as the same attempts to, or does, create a preference among the creditors of the said C. D., and that the same may be taken and held to be for the benefit of all the creditors of the said C. D.; that the land embraced in said deed of trust may be sold under a decree of this court and the proceeds distributed *pro rata* among all the creditors of the said C. D., who shall come into this suit and contribute to the costs and expenses thereof; and grant unto your orator such other further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

Text pages 560, 590; Barnes' W. Va. Code, Ch. 74. Adapted from Carlin's Hogg's Equity Procedure.

158a. Decree Setting Aside in Favor of Creditors Fraudulent Conveyance.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. et als. } Decree.

This cause came on this .... day of ......, 19.., to be heard upon the bill of complaint and its exhibits; upon the defendant's answer to the said bill with general replication thereto; upon the depositions on behalf of the plaintiff and defendant, duly taken and filed, in this cause, and was argued by counsel.

Upon consideration whereof, it is adjudged, ordered and decreed that the plaintiff do recover of and from the defendant, C. D., the sum of ...... dollars, the debt and demand in the bill and proceedings mentioned and described (*Va.*, with interest thereon at the rate of ...... per centum per annum from the .... day of ......, 19..; *W. Va.,* including the interest thereon to this date, with legal interest on said sum of ...... dollars) till paid and the costs of this suit.

And it appearing to the satisfaction of the court from the papers and evidence in this cause, that the deed from the said C. D. to the defendant, E. F., bearing date on the .... day of ......, 19.., conveying the land therein described to the said E. F., was made to hinder, delay and defraud the creditors of the said C. D., and especially the plaintiff, A. B., in respect to the debt and demand aforesaid, it is therefore further adjudged, ordered and decreed that the said deed, bearing date as aforesaid, be and the same is hereby set aside and held for naught, but so far only as the said debt and demand of said plaintiff, A. B., is concerned.

It is further adjudged, ordered and decreed that the said C. D. do pay unto the said A. B., within ...... days from the rising of this court, the said sum of ...... dollars with legal interest thereon from this date until paid and also the costs of this suit; and in default thereof, then J. R. S., who is hereby appointed a special commissioner for that purpose, shall sell said real estate, or so much thereof as may be necessary to pay said debt and interest thereon and the costs of this suit, (*here insert manner and terms of sale, etc.*); and out of the proceeds of such sale upon its confirmation, payment shall be made of said debt, interest and costs, and the residue, if any, shall be paid to said E. F. But before making such sale said special commissioner shall give bond in the penalty of ...... dollars, before the clerk of this court, conditioned for the faithful performance of his duties as such commissioner; and what said commissioner shall do under this decree, he shall report to the next term of this court.

Idem; Va. Code, §§ 5184-5186.

158b. Decree Dismissing Bill to Set Aside Deed on the Grounds of Fraud and Undue Influence.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Decree.
C. D.

This cause came on this .... day of ......, 19.., to be heard upon the bill of complaint and its exhibits; upon the defendant's answer to the said bill with general replication thereto; upon the depositions on behalf of the plaintiff and defendant, duly taken and filed in this cause, and was argued by counsel.

Upon consideration of which the court is of opinion and doth so adjudge, order and decree that C. D. was, on the .... day of ...., 19.., the time when the deed in the bill and proceedings mentioned and described was executed, of sound mind, and capable of making said deed; that said deed was not obtained by the undue or improper influence of K. L. or any other person, and that the said deed was fairly made and was the free and voluntary act of the grantor, C. D. It is, therefore, adjudged, ordered and decreed that the plaintiff's bill be and the same is hereby dismissed and that the plaintiff do pay unto the defendant his costs about the prosecution of his defense in this behalf expended.

Idem.

XXV. Forms in Injunction Proceedings

159. Notice of Application for Injunction.

(*This same form with appropriate changes may be used as a notice to enlarge or dissolve an injunction.*)

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D.
} In Chancery. Notice.

To C. D.:

Take notice that I will, on the .... day of ......, 19.., at ...... o'clock A. M. at ...... in the ...... of ......, and state of ......, make application to the judge of the ...... (*or,* to the ...... court) of said ...... for an injunction and restraining order, to enjoin you, your agents, servants and employees from (*state what acts are sought to be enjoined and why*) until the further order of the court; when and where you can appear if you see proper.

A. B.,
By Counsel.

..............., 19..

Q. M., Counsel.

Text pages 599, 650; Va. Code, §§ 6315-6328; Barnes' W. Va. Code, Ch. 133, §§ 1-13.

160a. Bill for Injunction.

In the ...... Court of the ...... of ......, ...:

M. M. et als.
v. } In Chancery. Bill.
J. W. et als.

To the Honorable ......, Judge of the ...... Court of ......:

Your complainants, M. M., H. M., B. M., R. M., D. M., T. M., and V. M., respectfully represent:

(1) That complainant M. M. is the widow of S. M. who died several years ago, seized and possessed of a tract of land situate near ...., containing .... acres, more or less, and adjoining the lands of J. W., as hereinafter set forth, and in which said lands the said M. M. has a dower interest, and complainants, H. M., B. M., R. M., D. M. and T. M., are the owners of the remainder of the said land in fee; and that complainant, V. M., is the owner of a tract of about ...... acres of land, adjoining the land before mentioned, of which S. M. died seized and possessed; and that complainant, H. M., is the owner of a tract of ...... acres of land, which land adjoins both the lands of the late S. M. and the said V. M., and that there is a road-way and wagon-way of the width of about five feet, which has its beginning on the tract of land owned by the said H. M., and on which he now resides, and which land he acquired by purchase from the said V. M. several years ago, and which said road-way continues through the lands of the said H. M. and the lands of which S. M. died seized and possessed, as aforesaid, and also through the lands of J. W. to the public road leading from ......, to ......, and that the said road-way has been in constant and uninterrupted use for more than eighty years, and during the lifetime of E. M., he being now seventy-nine years of age, and which said road-way is the only outlet from the lands of your complainants over and through the lands of the said J. W. to the public road leading from ...... in ...... to ......, and that the said road-way has, as aforesaid, been in constant and uninterrupted use and enjoyment by complainant, V. M., during her life time, and who has resided upon said lands all of her life; and that the said V. M. and the other complainants and their predecessors in title

have used the said road-way, running from and through the lands of complainants and the land now owned by the said J. W., for a period of more than twenty years next last past, and which said use of said road-way, has been constant, continuous, adverse, hostile, notorious, exclusive and uninterrupted by the said J. W. and his predecessors in title, and which use of the said road-way has been made for more than twenty years next last past, with the full knowledge and acquiescence of the said J. W. and his predecessors in title; and that the said J. W. acquired the said land by purchase from C. C. about eighteen years ago, and which road-way was then established and had been in constant use by complainants and their predecessors in title, to the knowledge of the said J. W., for more than thirty years.

(2) Your complainants further represent that during the Spring of 1922, ill-feeling developed between J. W. and complainant, H. M., as the result of the attempt by the said J. W. to construct and erect a fence almost in the middle of the public road leading from ......, and the construction of which said fence would have resulted in the use, as a public road of a portion of the land of complainant, V. M., which said land at that time was rented and controlled and being cultivated by the said H. M. and to which said action on the part of the said J. W. said H. M. objected, with the result that the said J. W. attacked him and a fist fight ensued between them. Up until that time and for sometime after, your complainants charge that the said J. W. never made any complaint to complainants, or any of them, nor protested to them or any of them, of the use of the said road-way running through his lands, as aforesaid, until the latter part of July, 19.., at which time the said J. W. sent to the said H. M. a notice in writing, notifying him not to use the said road-way again, and upon the further use of the said road-way by the said H. M. the said J. W. recently made complaint before one P., a Justice of the Peace of and for ...... Magisterial District of ......, and caused to be issued by the said Justice a warrant charging the said H. M. with trespass upon the land of the said J. W. and which said warrant came on for trial before the said Justice at ...... in said county, on July .., 19.., at which trial the Justice first fined the said H. M. five dollars and costs, and later on, in the same trial, raised the fine to ten dollars and costs,

from which said fine and costs the said H. M. appealed to the ...... Court of ......, and in which court the same is now pending; and,

(3) On the first day of the July term, 19.., of the ...... court of ......, the attorney for the said J. W., in addressing the court relative to the fixing of a date for trial on the case appealed, as aforesaid, intimated that warrants would be sworn out against the said H. M. for each and every time he traversed the said road-way.

(4) Your complainants represent that, with the exception of the said V. M. the road-way now used by them over and through the lands of the said J. W. is their only outlet from said lands to the public road leading from ......, to ......, and that they are advised that by reason of the constant, notorious, adverse, hostile, exclusive and uninterrupted use of the said road-way for a period of more than twenty years next last past, and which said use has been with the full knowledge and acquiescence of the said J. W. and his predecessors in title, they have acquired and easement in said land and the use and enjoyment thereof and the right of way thereover, by way of prescription, and that the said use is exclusive to your complainants and is not enjoyed in common with any other persons.

Your complainants, therefore, pray that the said J. W. may be enjoined from the issuance of further warrants for trespass for the use of said road-way against the said H. M., or the other complainants herein named, and that he may be likewise enjoined from in any wise interfering with the use of said road-way by your complainants, or from doing any act which may interfere with the free enjoyment and use of said road-way by your complainants, until the said appeal cases may be heard in your Honor's court, and until it may also be determined by this court as to whether or not your complainants have acquired by prescription a right to the continued and uninterrupted use and enjoyment of the said road-way, as hereinafter set out.

And to this end your complainants pray that this court may hear evidence and determine the question as to whether or not your complainants are entitled to such a right of way, by prescription, over and through the lands of the said J. W.; and that all proper process may issue, orders and decrees may be made and entered, inquiries directed, and than an injunction may issue from this court immediately, directed to the said J. W., enjoining him in accordance with the prayer of this Bill from in any wise interfering with any of the complainants named herein, in the use and enjoyment of said road-way until the question of their right to so use the said road-way shall have been passed upon by this court; and that the said J. W. may also be enjoined from the commission of any act or acts which may, in any wise, interfere with the use and enjoyment of said road-way by your complainants; and that the said J. W. may be made a party defendant to this bill, and required to answer the allegations thereof; and that proper counsel fees may be allowed to attorneys for complainants, for the institution and prosecution of this suit, and that complainants may be granted such other, further and general relief as the nature of their case may require or to equity shall seem meet and just.

And your complainants will ever pray, etc.

H. M.
M. M., etc.

M. S., Counsel for Complainant.

(*Append proper affidavit as in Forms No. 32.*)

Idem; text page 651.

160b. Bill for Injunction to Judgment at Law.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Bill for Injunction.
T. R.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., respectfully represents:

(1) That T. R. recovered a judgment at law against your orator in the ...... Court of ...., at the ...... term, 19.., for $......, with interest thereon from the .... day of ......, 19.., and $...... costs. A copy of the said judgment marked "Exhibit A" is herewith filed and is prayed to be read as a part of this bill.

(2) An execution has been issued upon said judgment, and is now in the hands of ......, sheriff of the county of ......, who is about to levy the same upon your orator's property.

(3) Your orator avers that the said judgment is unjust, that he had and has a full and complete defense to the action in which it was rendered, which he could and would have made thereto, had he not been prevented from doing so by the action of the plaintiff, whereby your orator was deceived and lulled into false security, without any fault, laches, or neglect on his own part. For a more particular statement of the causes which prevented your orator from making defence to said action, he recites the following circumstances:

(4) The said judgment was recovered on a note drawn by your orator on the .... day of ......, for the sum of ......, payable on the .... day of ......, to the said T. R. The said note had, long before this institution of said action, been paid by your orator to the said T. R. At the time of said payment your orator was indebted to the said T. R. by four several notes, amounting in the aggregate principal and interest, to $....... Your orator paid the said sum to the said T. R. and took his receipt for the same, the said receipt specifying for what the money was paid, and showing that the amount of the said note on which said judgment was recovered was embraced therein.

(5) The three other notes were delivered to your orator by the said T. R. at the time of signing the said receipt, and the fourth note was also demanded by your orator, but the said T. R. stated that it was lost or mislaid, and that when he found it it would be restored to your orator. The said receipt, and the three notes delivered your orator, are herewith filed, marked exhibits B, C, D and E, and are prayed to be read as parts of this bill.

(6) Some time after the payment of the said four notes, the said T. R. placed the fourth note, above referred to, which your orator had paid off as above recited, in the hands of a lawyer for collection, and the said lawyer thereupon instituted suit upon the same against your orator.

(7) Upon receipt of the process in said suit, your orator

called on the said lawyer and exhibited to him his receipt aforesaid, by which payment of the said note was acknowledged. Upon seeing which, the said lawyer at once admitted that there was no cause of action, and promised that he would dismiss the suit of T. R. against your orator. Resting upon this assurance, your orator made no defence to the said cause, but the said suit was not dismissed as promised, but, on the contrary, judgment for the full amount of the said note, interest and costs, as before recited, was rendered against your orator.

(8) Your orator further states, that the said judgment was rendered without your orator's knowledge until the term of court at which it was rendered had expired. Your orator therefore alleges that the failure to dismiss the said action, as promised, was in fraud of his just rights, and that the judgment rendered therein was unjust and should be set aside, and a new trial granted.

Forasmuch then as your orator is remediless, save in a court of equity, he prays that the said T. R. may be made a party defendant to this bill and required to answer the same in his own proper person; that he, his agents, attorneys at law, and all others, be enjoined and restrained from proceeding to enforce said judgment in any way; that especially the said sheriff of the county of ...... be joined and restrained from levying the said execution now in his hands; that property process issue, and all proper orders be made; that the said judgment be set aside, and a new trial of the said action at law be granted your orator, and that all such further and general relief may be afforded your orator as in the premises may be just and right. And your orator will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

(*Append affidavit as in Forms No. 32.*)

Idem.

160c. Bill to Enjoin the Erection of a Nuisance.

In the ...... Court of the ...... of ......, ...:

A. B. }
v. } In Chancery. Bill for Injunction.
M. M. }

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That your orator resides at and owns the dwelling known as No. .... on ...... in the ...... of ......, and has there resided for the last .... years, his family consisting of himself, his wife, three grown daughters, and two sons who are yet quite young, and the usual servants and help of such a household.

(2) Your orator avers that on the south side of his house he has a portico on which it is the habit of his family and friends to assemble and sit whenever the weather permits, and along the same side of his house are many of the windows and certain doors by which light, air and access and egress are admitted to and from his said house.

(3) Your orator avers that immediately adjoining his said residence on the south side thereof and within .... feet of the line of your orator's lot, and .... feet from his dwelling, resides M. M., but who only came there to reside within the last thirty days.

(4) Your orator avers that the former occupants of the property in which the said M. M. now resides was Mr. P. G., and who, while he there resided, kept his premises in admirable order and condition, and was guilty neither of the offense now complained of against the said M. M., nor of any other objectionable conduct; nor, indeed, has any other occupant of the same, since your orator has resided in his dwelling aforesaid, given any cause for such complaint. But the said M. M. had only moved into the premises aforesaid a few days, when he established in close proximity to the line of your orator's lot, and within .... yards from his dwelling, a pen and filled the same with hogs.

(5) And your orator avers that the filth created by and the

odor arising from the said hogs and the pen are such as not only to make it impossible, consistent with either pleasure or health, for your orator, his family, friends or servants to occupy the portico or to raise the windows of his dwelling; but should he leave it he probably could not secure a tenant at all for the premises, or if he did it would be at a ruinous sacrifice.

(6) Your orator avers that the keeping of hogs upon his premises is a nuisance and is not in any way essential to the enjoyment or profit of the said M. M., and if it was essential to either, your orator insists that he should not be allowed to keep them, when to do so is so injurious to your orator's property and destructive to his health and comfort.

Your orator therefore prays that the said M. M. may be made a party defendant to this suit and compelled to answer this bill; that proper process issue; that the said M. M. may be compelled to wholly remove his said pen and his hogs from his premises, and that he may be enjoined from establishing the former and keeping the latter at any time thereon; and that your orator may be granted such further and general relief as to equity may seem meet and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

(*Append affidavit as in Forms No. 32.*)

Idem.

160d. Bill to Enjoin a Nuisance by Fouling a Watercourse.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D.
} In Chancery. Bill for Injunction.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That for .... years last past plaintiff has been the owner of a farm in the county of ...... and state of ......, conveyed to your orator by J. R., and wife, by deed dated the .... day of

......, 19.., of record in the office of the Clerk of the ...... court of the ...... of ......, ..., in Deed Book ...... page ...., an attested copy of which is filed herewith marked "Exhibit A" and made a part of this bill; through which farm has ever flowed and now flows a stream known as ......;

(2) That on or about the .... day of ......, 19.., one C. D., the defendant, erected a paper mill on said stream about .... miles above said farm of plaintiff, and has continued to manufacture paper at said mill from thence until the present time;

(3) That in the use of said mill said defendant has employed for cleaning rags, various noxious chemical preparations, and has permitted the same, after being used for said purpose, to flow into said creek, thereby rendering the water of the same unwholesome and unfit for domestic use and for stock to drink;

(4) That before the erection of said mill plaintiff had, by the use of pipes, carried the water of said stream to his house, and was using it for domestic purposes, and had also watered his stock at said stream; but since the erection of said mill and the manufacture of paper thereat, the water of said stream, where it enters the farm of plaintiff and throughout its entire course, is so foul from the use of said chemicals as to be unfit to use either for domestic purposes or for stock to drink, and because thereof is not used by the plaintiff;

(5) That on the .... day of ......, 19.., the plaintiff notified said defendant of the injury to the water and the cause of the same, and requested him to desist from any further pollution of the waters of said stream by said chemicals; but notwithstanding, said defendant has still continued said injury to the plaintiff;

(6) That if the defendant is permitted to continue the above enumerated polluting and befouling the said stream this plaintiff will be irreparably injured.

Your orator therefore prays that the said C. D. may be made a party defendant to the bill and be required to answer the same; that proper process issue; that the said C. D. may be restrained and enjoined from permitting the matter hereinbefore enumerated from flowing into the said stream and befouling and polluting the same, and that he may be required not to permit the said refuse and *debris* to be carried into the said stream as above stated, and grant unto your orator such other and further relief as to equity may seem meet and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

(*Add the proper affidavit as in Forms No. 32.*)

Idem. Adapted from Carlin's Hogg's Equity Procedure.

160e. Bill for Injunction against Cutting Timber Pending an Action of Ejectment.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Bill for Injunction.
C. D.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That your orator is the owner in fee of a certain tract of land situate in the County of ...... and State of ......, as will more fully appear from your orator's title deed therefor, duly of record in the said county, a copy of which is herewith filed, marked "Exhibit A," and made part of this bill;

(2) That your orator has held and owned the said tract of land for many years, under and by virtue of the said title deed, and has paid the taxes thereon ever since, and is now the owner thereof, which ownership is shown by the said deed;

(3) That the chief value of said land is the growing and standing timber thereon, consisting of pine, poplar, walnut, ash and oak, and that if said timber should be removed said property would be of comparatively little value;

(4) That the defendant has recently set up some claim of title to said land, but upon what ground said claim is founded this plaintiff is unable to say; but plaintiff avers that such claim is wholly unfounded, as this plaintiff has the only title subsisting in and to said land;

(5) That the said C. D. by reason of said claim of title, has entered upon and taken possession of said land, and is now in possession thereof, cutting down and hauling away to the market the said standing and growing timber thereon, and threatens to continue to do so, and will do so until the said land is entirely denuded of its timber, unless restrained from so doing;

(6) That there is now a considerable quantity of timber that has been cut down, still lying upon the said land, and it has not yet been removed therefrom, but the said defendant threatens to remove and will remove it, unless inhibited from so doing;

(7) That your orator has instituted in the county aforesaid in the circuit court thereof, an action of ejectment against the said C. D. to determine the validity of his title to said land as against the said C. D., and to oust him, the said C. D. from the possession and occupancy of the said land;

(8) That the said C. D. is the owner of no property whatever, either real or personal, as plaintiff is informed and believes and so charges the fact to be; that the said C. D. is insolvent, and that any judgment for damages which the plaintiff could obtain against him in an action at law would be entirely unavailing; so that if the said defendant is permitted to continue the cutting and appropriation of said timber to his own use this plaintiff will be irreparably injured.

Your orator therefore prays that the said C. D. may be made the party defendant to this bill and be required to answer the same; that the proper process issue; that an injunction may issue, inhibiting and restraining the said C. D. from the further cutting of any of the standing and growing timber on the said land, and from the removal of any and all timber now on the premises thereof, which has been cut down by him, the said C. D., until the further order of this court; and grant unto your orator such other, further and general relief as to equity may seem meet, and as in duty bound, your orator will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

(*Add proper affidavit as in Forms No. 32.*)

Idem.

160f. Bill to Enjoin the Sale of Property under a Trust Deed.

In the ...... Court of the ...... of ......, ...:

A. B. v. C. D. and E. F., Trustee	In Chancery. Bill for Injunction.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That on the .... day of ......, 19.., your orator executed a deed of trust to the said E. F., trustee, on a tract of land owned in fee by your orator, therein described, to secure to the defendant, C. D., the payment of a certain promissory note of even date therewith, which deed of trust is duly of record in the Clerk's Office of the ...... Court of ......, in Deed Book No. ...., at page ...., an attested copy of which is herewith filed, marked "Exhibit A" and made part of this bill;

(2) That your orator further sheweth that the rate of interest on said debt for which said note was given is ten per cent. per annum; that your orator paid the interest on said note for several years at ten per cent. but received credit simply for the interest and no credit on the principal for the excess of usurious interest, which, in the aggregate, now amounts to the sum of ...... dollars, for which your orator, in equity and good conscience, should have a credit upon said debt;

(3) Your orator further sheweth that he has made a large number of payments on said note, for one of which payments, to-wit, seventy-five dollars, made on the .... day of ......, 19.., your orator has never received any credit upon the said note;

(4) Your orator further sheweth that by crediting the said aggregate sum of usurious interest upon the principal of the said debt, and the said seventy-five dollars paid as aforesaid and not credited thereon, your orator would not owe anything at all upon the said debt;

(5) Your orator further sheweth that although the said debt has thus been paid off and discharged, the said E. F., trustee, as

aforesaid, has advertised the land for sale under the said trust deed in the ......, a newspaper published in said county, which sale is advertised to take place at ...... on the .... day of ......, 19.., at the hour of ...... o'clock on that day; all of which will more fully and at large appear by a copy of said notice of sale, herewith filed, marked "Exhibit B" and made part of this bill;

(6) Your orator further sheweth that he represented to the said trustee that the said debt has been paid off and discharged as aforesaid, and requested him, the said trustee, not to sell the said property but to file his bill in a court of equity for an adjustment and settlement of the accounts between your orator and the said C. D., arising upon the said loan, but the said E. F. failed and declined to do so.

Your orator therefore prays that C. D. and E. F., trustee, may be made parties defendant to this bill and be required to answer the same; that proper process issue; that the sale advertised to take place on the .... day of ......, 19.., under the notice published in said newspaper as aforesaid be enjoined and restrained; that any sale under any other notice by the said trustee be inhibited, as well as any attempt at such sale, until the further order of this court; and grant unto your orator such other, further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

(*Add affidavit as in Forms No. 32.*)

Idem.

160g. Bill to Restrain the Taking of Private Property for Public Use without Compensation.

In the ...... Court of the ...... of ......, ...:

A. B. v. City of	In Chancery.	Bill for Injunction.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That he is the owner in fee of two certain lots of land on ...... street in the City of ......, and state of ......, upon which lots he has erected storehouses in which he is now doing business as a merchant, which lots were conveyed to him by L. M. by deed bearing date on the .... day of ......, 19.., and duly of record in Deed Book No. .... at page ...., of the records in the office of the clerk of the ...... Court of ......, an attested copy of which is herewith filed, marked "Exhibit A," and made part of this bill;

(2) That the said City of ...... by its officers, agents and employees, without the consent of your orator, and without having first condemned said lots in the manner provided by law, is now, to-wit, on the .... day of ......, 19.., building, erecting and constructing on the south side of your orator's lots, but entirely on the lots themselves, on the north side of said ...... street, immediately west of one of said storehouses, in said City of ......, a brick pavement; that no part of said lots upon which said town is constructing, and proposes to construct, said pavement has been dedicated to the public use, either for purposes of a street or for any other purpose; that said pavement, if permitted to be constructed, will entirely prevent your orator from passing into his said lots to reach his storehouses with his automobiles, horses and wagons as he has heretofore been accustomed to do, and will greatly injure his business as a merchant, the effect whereof will be to deprive your orator of the substantial value, use and benefit of his said property without due process of law;

(3) That the said City of ...... through its competent authorities, refuses to make a crossing for automobiles, horses and

wagons over the pavement if the same shall be erected, so that the plaintiff could cross and recross as he has hitherto been accustomed to do.

Your orator therefore prays that the said City of ...... may be made the party defendant to this bill and be required to answer the same; that proper process issue; that the said City of ......, its officers, agents and employees, be enjoined and restrained from building, constructing and erecting said pavement on his said lots until the said City and its authorities have condemned said ground by due process of law for the purpose of constructing said pavement, and that the proceedings to condemn the same be conducted in the manner prescribed by law, and that a crossing for the passage of automobiles, horses and wagons over said pavement in going to and leaving the premises of your orator may be constructed, and grant unto your orator such other, further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

(*Append proper affidavit as in Forms No. 32.*)

Idem.

161. Answer to a Bill of Injunction to Judgment at Law.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Answer.
T. R.

The answer of T. R. to a bill in equity exhibited against him in the ...... Court of the ...... of ...... by A. B.

This respondent for answer to the said bill answers and says that the judgment mentioned in the bill was fairly obtained, and if the plaintiff had any defense to the action in which it was recovered it was his duty to have made it at law. This respondent denies the statement in the bill that this respondent informed the plaintiff that he need not take any steps to defend the said action, and that this defendant would dismiss the same. Neither of said statements is true. This respondent also denies that he stated to the plaintiff that he was fully satisfied that the debt had been paid. On the contrary, this respondent stated to the plaintiff that if he had any defense to the action he could make it, and the verdict and judgment, if rendered against this respondent, would be a full protection to him in his representative capacity. The failure of the plaintiff to make defense at law either was gross negligence on his part, or because he had no confidence in his ability to satisfy the court and jury that his defense was a just one. In either event, the judgment ought to stand: and this respondent asks that the injunction awarded the plaintiff be dissolved and his suit be dismissed. And now having fully answered, this respondent prays hence to be dismissed with his costs, &c.

T. R.,
By Counsel.

L. L., Counsel.

(*There may be inserted in this answer any other proper defences such as the statutes of limitations and frauds.*)

Text pages 599, 652; Va. Code, §§ 6315-6328; Barnes' W. Va. Code, Ch. 133, §§ 1-13.

162a. Order Awarding an Injunction by a Judge in Vacation.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This .... day of ......, 19.., A. B. by his counsel presented his bill with its accompanying exhibits, duly verified by affidavit, to the undersigned Judge of the ...... Court of the ...... of ......, in the vacation of said court, praying for an injunction against C. D., restraining and enjoining him from (*here state what is enjoined*) as in said bill mentioned and described, and upon consideration of said bill and exhibits the undersigned Judge is of opinion to and doth hereby award an injunction as prayed in said bill. (*In Virginia insert,* this injunction shall be effective from, *here state when injunction begins to operate,* *usually time when bond is given* to ......, at which time it shall stand dissolved, unless prior thereto it be enlarged or a further injunction granted.) But said injunction is not to take effect until bond with good security has been given before the Clerk of the said court in the penalty of ...... dollars, conditioned to pay such costs as may be awarded against the said A. B., and also such damages as shall be incurred by the said C. D., in case the said injunction shall be hereafter dissolved.

Given under my hand this ...... day of ......, 19.....

F. B. W.,
Judge of the ...... Judicial Circuit,
State of ......

The Clerk of the said court will enter the foregoing as a vacation order as of the date of the .... day of ......, 19..

....
Judge of the ...... Judicial Circuit ......,

Idem; text page 655.

162b. Another Form of Order Granting an Injunction in Vacation.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

An injunction is granted in accordance with the prayer of this bill, restraining the defendant, C. D., from further proceeding with the execution issued by him upon his judgment obtained against the complainant, A. B.; and C. B. H., the sheriff of ...... county, is enjoined and restrained from levying the said execution upon the property of the said A. B., or if he shall have levied the same from selling under his said execution, and he is directed to restore the said property so levied upon, if any such levy hath been made, to the custody and possession of the said A. B. (*in Virginia insert*, this injunction shall be effective from, *here state when injunction begins to operate, usually the time when bond is given,* to ......, at which time it shall stand dissolved, unless prior thereto it be enlarged or a further injunction granted). But before this injunction shall take effect, the said A. B., or someone for him, shall enter into and acknowledge bond, with good security, before the clerk of the ...... court of the county of ...... in the penalty of $......, conditioned according to law.

(*When certain fiduciaries and others are complainants, in lieu of the words from* "But before this injunction," etc., *insert*: The complainant being a fiduciary, no bond is demanded of him.)

(*Conclude as in 162a.*)

Idem.

162c. Decree for Temporary Injunction.

In the ...... Court of the ...... of ......, ...:

M. M.
v. } In Chancery. Decree.
J. W.

Upon the prayer of the within bill, an injunction is granted the complainants, M. M., B. M., D. M., T. M., V. M., and H. M., enjoining and restraining the defendant, J. W., from obstructing or in any wise interfering with the free use by the complainants of the road-way across the land of the defendant, which road-way leads out from the lands of the complainants through the lands of the said J. W. to the public road leading from ...... to ......; and further to enjoin and restrain the defendant from suing out and having issued criminal warrants for trespassing against any one or more of the said complainants, on account of the use by the said complainants or any of them of the said road-way, until the further order of this Court. This injunction order shall be inforce from this date; (*in Virginia add*, to ...... at which time it shall stand dissolved unless prior thereto it has been enlarged or a further injunction granted) but this order shall not become effective until the complainants or some one for them shall enter into bond before the Clerk of this Court in the sum of ...... conditioned according to law.

(*Where this order is endorsed on a summons to be served on the defendant the clerk should add*, the bond required has been given according to law.

Teste: C. C. B., Clerk.)

Idem.

162d. Order Awarding an Injunction by the Court in Term Time to Judgment at Law.

In the ...... Court of the ...... of ......, ...:

A. B.
v. In Chancery. Order.
C. D.

On motion of the plaintiff, by counsel, and for good cause shown, an injunction is hereby awarded enjoining and restraining the defendant, C. D., his agents, attorneys and all others from further proceedings on a judgment, recovered by the said defendant against the plaintiff in this suit in the ...... court of the ...... of ......, ..., on the .... day of ......, 19.., and in the sum of ...... dollars, until the further order of this court.

(*In Virginia insert this*: This injunction shall be effective from ...... to ......, at which time it shall stand dissolved unless prior thereto it be enlarged or a further injunction granted.)

But the said injunction is not to take effect until the plaintiff in this suit, or some one on his behalf, shall enter into bond with sufficient security before the clerk of this court in a penalty equal to double the amount of the said judgment, conditioned to pay the said judgment and all such costs as may be awarded against the said plaintiff in this suit, and all such damages as shall be incurred by the said C. D., in case said injunction shall be hereafter dissolved; (nor until the plaintiff herein also files with the clerk in the said ...... court of ...... of ...... a release of all errors of law in the said judgment and proceeding.)

Idem.

163. Injunction Order Endorsed on Summons.

To the ...... of ......:

Memo: The object of this suit is to enjoin and restrain J. W. from obstructing or in any wise interfering with the free use by the complainants, or any of them, of the roadway across the land of the defendant, the said J. W., which roadway leads out from the lands of the complainants through the lands of the said J. W.

to the public road from ...... to ...... And further to enjoin and restrain the said defendant, J. W., from suing out and having issued criminal warrants for trespass against any one or more of the said complainants on account of the use by them of said road.

E. C. L., Clerk.

Idem.

164a. Decree Dissolving Injunction unless New Bond Be Given.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery.
C. D.

Upon rules to show cause why the injunction heretofore awarded in this cause should not be dismissed.

This cause came on this .... day of ......, 19.., to be heard upon the rules aforesaid, and upon the affidavits and depositions taken in relation thereto, and was argued by counsel. Upon consideration whereof it is adjudged, ordered and decreed that unless the complainant file a new bond in this cause with the Clerk of this court with good security, in the penalty of ...... dollars and conditioned (*here name the conditions*) within ...... days from this day, then the injunction heretofore awarded to this cause be and stand dissolved as an act of this day.

Idem. Adapted from Carlin's Hogg's Equity Procedure.

164b. Order Made in Vacation Overruling or Granting Motion to Dissolve an Injunction.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

Before the undersigned Judge of the ...... Court of the ...... of ......, ..., in vacation came the defendant by counsel in the chancery cause of A. B. against C. D. pending in the said court, and submitted a motion to dissolve the injunction heretofore awarded herein, upon the bill, answer, replication, depositions taken therein, upon the notice duly served upon the said plaintiff of the time and place of making this motion, and upon the argument of counsel thereon for plaintiff and defendant. Upon consideration of all of which the undersigned Judge doth hereby sustain (*or,* overrule) said motion, and doth dissolve, (*or,* refuse to dissolve) the said injunction.

....
Judge of the ...... Court of ......
....

The Clerk of the ...... Court of ...... and State of ...... will enter the foregoing as a vacation order, as of the date of the .... day of ...., 19..

....
Judge.

Idem.

164c. Decree Made in Term Time Overruling Motion to Dissolve Injunction.

In the ...... Court of the ...... of ......, ...:

A. B.
v. In Chancery. Decree.
C. D.

This cause came on this .... day of ......, 19.., to be heard upon the plaintiff's bill and its exhibits, upon the motion made by the defendant to dissolve the injunction heretofore awarded in this cause; and was argued by counsel. On consideration whereof the court is of opinion that the said injunction ought not to be dissolved; and it is therefore adjudged, ordered and decreed that the said motion to dissolve said injunction awarded in this case be and the same is hereby overruled.

Idem.

164d. Decree Made in Term Time, Dissolving an Injunction and Dismissing the Bill.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on this .... day of ......, 19.., to be heard upon the bill and its exhibits; upon the answer of the defendant to said bill and general replication thereto; upon the depositions taken and filed in the cause; upon the defendant's motion to dissolve said injunction and to dismiss the plaintiff's bill; and upon argument of counsel. Upon consideration whereof the court is of opinion that the injunction heretofore awarded in this cause ought to be wholly dissolved. It is therefore adjudged, ordered and decreed that the said injunction be and the same is hereby wholly dissolved. And the sole purpose of this suit, as appears to this court, being for the purpose of obtaining the injunction aforesaid, and the plaintiff showing no sufficient cause why his said bill should not be dismissed, it is therefore adjudged, ordered and decreed that the said bill be, and the came is hereby dismissed, and that the defendant do recover of the plaintiff his costs about his defense by him in this behalf expended, (*add in West Virginia,* including a statute fee of twenty dollars.)

Idem.

164c. Decree Dissolving Injunction and Discharging Receiver.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D.

This cause came on this day to be heard upon the plaintiff's bill and its exhibits; upon the answer of the defendant and general replication thereto; upon the depositions taken and filed in the cause; upon the motion made by the defendant to dissolve the injunction heretofore awarded, and discharge the receiver appointed herein; and upon argument of counsel. Upon consideration whereof the court is of opinion that the order awarding the injunction, and appointing a receiver in this cause ought not to have been made; and that the motion of the defendant to dissolve said injunction, as well as his motion to vacate the order appointing said receiver, is well taken and should be sustained. It is therefore adjudged, ordered and decreed that the said injunction be and the same is hereby dissolve; that the said order appointing M. M. Receiver in this cause, be, and the same is, hereby vacated and set aside, and the said M. M. is discharged from his receivership in this suit; and he, the said M. M., is hereby directed to at once settle his accounts, and to turn over the property now in his possession to the defendant, and that he refrain from exercising any further control over any property heretofore committed to his charge or custody. It is further adjudged, ordered and decreed that the defendant do recover of the plaintiff his costs about his defense by him in this behalf expended. (*Add in West Virginia,* including a statute fee of twenty dollars.)

Idem.

165a. Decree for Permanent Injunction.

In the ...... Court of the ...... of ......, ...:

H. M. et als.
v.
J. W.
} In Chancery. Decree.

This, cause, which has been regularly matured and set for hearing at the rules, came on this .... day of ......, 19.., to be heard upon the bill of the complainants and the answer thereto of the defendant, J. W., with general replication to said answer; the depositions of witnesses duly taken on behalf of the complainants and the defendant, and the exhibits filed therewith, and was argued by counsel.

Upon consideration whereof, the court having maturely considered the pleadings and the evidence, and the exhibits filed therewith is of opinion that the allegations of the bill are fully sustained, and that the complainants, H. M., M. M., B. M., R. M., T. M., and V. M., have acquired by prescription, the right of way across the lands of the defendant, J. W., as set out and defined in the bill, and are entitled to have the temporary injunction order, heretofore granted in the cause on the .... day of ......, 19.., made perpetual, doth so decide and declare, and doth adjudge, order and decree that the said J. W., be and he hereby is, perpetually enjoined and restrained from obstructing or in any wise interfering with the free and convenient use by the said complainants, their successors and assigns, of the roadway across the land of the defendant, leading out from the lands of the complainants through the said lands of the defendant to the public road leading from ...... to ......, as heretofore used and enjoyed by the said complainants.

It is further ordered that the clerk of this court do record, in current deed book of his office, a copy of this decree and index the same in the names of all the parties to this suit.

And the court doth further order that the complainants recover of the defendant their costs about this suit in this behalf expended.

Idem.

165b. Decree Perpetuating an Injunction to a Trust Sale.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D. and E. F.

This cause came on this .... day of ......, 19.., to be heard upon the bill and its exhibits; upon the answer of the defendant to said bill and general replication thereto; upon the depositions taken and filed in the cause; upon the defendant's motion to dissolve said injunction and to dismiss the plaintiff's bill; and upon argument of counsel. Upon consideration of all which the court is of opinion, and doth so adjudge, order and decree, that the plaintiff is entitled to the relief prayed for in his said bill. It is therefore adjudged, ordered and decreed, that the injunction heretofore awarded in this cause, restraining C. D., trustee in the deed of trust bearing date on the .... day of ......, 19.., executed by A. B. to said C. D. to secure the payment of a debt therein described to the defendant, E. F., from making sale of the property under the notice mentioned in said bill, be, and the same is hereby made perpetual. And it is further adjudged, ordered and decreed that said C. D., trustee, as well as said E. F. *cestui que trust,* be and they are, and each of them is, perpetually enjoined from making sale, or attempting to make sale, of said property in said trust deed embraced, or any part thereof. And it appearing to the court that there is nothing due upon the said trust deed in the bill and proceedings mentioned, and described, and that the same has been entirely paid off, and, therefore, the land thereby discharged, it is therefore, hereby adjudged, ordered and decreed that the defendant, E. F. (*in Virginia insert,* release said deed of trust in the manner prescribed by law; *in West Virginia insert,* execute a release within thirty days from the rising of this court, in the manner prescribed by law, and deliver the same to the said plaintiff from record) and in default thereof that ...... be, and he is hereby, appointed a special commissioner to execute such release, which he shall do, and deliver the same to the said plaintiff for record, and for which the said special commissioner shall be allowed the sum of five dollars, to be taxed as a part of the costs of this suit.

It is further adjudged, ordered and decree that the plaintiff do recover of and from the defendant his costs in and about the prosecution of his suit in this behalf expended. (*Add in West Virginia,* including a statute fee of ...... dollars.)

Idem.

166. Order to Show Why an Attachment Should Not Issue for Disobeying an Injunction Order.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

And now, this day, the petition duly verified, of said A. B. having been filed in this court, in the above entitled cause, and it appearing to the court by the said petition and affidavit thereto attached, that the said C. D., has disobeyed the injunction order duly served upon him, inhibiting and restraining him (*here set* *forth the matters enjoined, and also state wherein the defendant has not obeyed the injunction order*); it is therefore ordered that the said C. D. be required to be and appear before this court on the .... day of ...... and then and there to show cause why he should not be adjudged to answer for contempt to the court in disobeying the lawful process of this court as above mentioned duly served upon him.

It is further ordered that a duly attested copy of this order be forthwith served upon the said C. D.

Text page 671.

167. Injunction Bond.

Know All Men by These Presents: That we, A. B. and S. S., are held and firmly bound unto ...... in the penalty of ...... dollars ($......) which well and truly to be paid we bind ourselves, our heirs, etc., and as to this obligation we each hereby waive the benefit of the homestead exemption.

Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such that, whereas Hon. ......, Judge of the ...... Court of ......, ... (*or,* the ...... Court of the ...... of ......, ..., *if the injunction is awarded in term*), did, on the .... day of ......, 19.., at the suit of A. B., enjoin one C. D. from (*here set forth the exact words of the injunction*), providing, however, that said injunction should not take effect until the said A. B. should execute before the clerk of the said ...... Court of the ...... of ......, ..., bond in the penalty of ...... ($......) with good security, and conditioned that the said A. B. should (*here set forth the conditions required to be inserted in the bond, such as,* to pay the judgment or decree enjoined; *or* pay such costs as may be awarded against the said A. B., and also such damages as may be incurred by the said C. D., in case the said injunction shall be hereafter dissolved);

Now, if the said A. B. shall well and truly perform the obligations and requirements of the said decree, and shall also pay all such costs as may be awarded against the said A. B., and all such damages as may be incurred in case the injunction shall be dissolved (*and with a further condition, if a forthcom-*

ing bond has been given under a judgment or decree, to indemnify and save harmless the sureties in said forthcoming bond and their representatives against all loss or damages in consequence of said suretyship, *or if the injunction be not to a proceeding on a judgment or decree, with such condition as the court or judge may prescribe*), then this obligation is to be void, but otherwise to remain in full force.

A. B. (SEAL)
S. S. (SEAL)

Text page 657.

XXVI. Forms in Proceedings for Receivers

168. Notice of Application for the Appointment of a Receiver.

In the ...... Court of the ...... of ......, ...:

State of ......,

...... of ......, to-wit:

A. B.
v. } In Chancery. Notice.
C. D. and E. F.

The defendant in the above entitled cause will take notice that an application will be made on the ...... day of ......, 19.., to the ...... Court of the ...... of ......, (*or* the judge of the ...... Court of said ......) at ...... o'clock A. M. or as soon thereafter as counsel may be heard, for the appointment of a receiver (*here state purposes and objects of appointment*) and hold the same subject to the further order or decree of the said court in this cause, with all the power and authority and subject to all the responsibility of receivers.

Yours respectfully,
A. B., By Counsel.

Dated the ...... day of ......, 19..
Q. M., Counsel.

Text pages 682, 695; Va.. Code, §§ 6280, 6322; Barnes' W. Va. Code, Ch. 133, § 3. See also XXV, Forms in Injunction Proceedings, for forms of Bills.

169. Decree Appointing Receiver.

A. B.
v.
C. D. } In Chancery. Decree.

This day the plaintiff, by counsel, moved the appointment of (*or* the undersigned Judge of said court in the vacation thereof, to appoint) a special receiver of the ...... property in the bill and proceedings in this cause mentioned and described. And the court being satisfied from the bill and exhibits, and affidavits filed herein of A. B. and W. R., that a proper case for the appointment of a receiver has been thus shown, and reasonable notice of this application having been given to the said C. D., it is hereby adjudged, ordered and decreed that R. T. B. be, and he is hereby appointed a special receiver for said property; (*here insert the duties of the receiver*). But before said special receiver shall act under this decree he shall give bond with sufficient security to be approved by the Clerk of this court, in the penalty of ...... dollars, conditioned for the faithful performance of his duties as such receiver.

(*Here an order of injunction may be added if the case should require it, as presented by the bill, enjoining the defendant from interfering with the property or attempting to make disposition thereof. If a vacation order add:*

F. B. W.
Judge of the ...... Court of ......
and State of ....

The Clerk of said court will enter the above as a vacation order as of the date of the ...... day of ......, 19..)

F. B. W., Judge.

Idem.

XXVIIA. Forms in Proceedings to Enforce a Vendor's Lien

170. Bill to Enforce a Vendor's Lien.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D., E. F. and G. H.
} In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That on the ...... day of ......, 19.., your orator was the owner in fee simple of a certain tract or parcel of land containing ...... acres, situate in the ...... of ......, and state aforesaid, and on that day by deed of that date he sold and conveyed the same to the defendant, C. D., for the sum of ...... dollars, of which ...... dollars was paid in cash, and for the residue of the said purchase money the said C. D., executed two notes payable to your orator or his order, each in the sum of ...... dollars, and bearing even date with the said deed of conveyance, as will more fully appear from said deed, duly of record in the office of the clerk of the ...... court of said ...... in Deed Book No. ......, at page ......, an attested copy of which is herewith filed marked exhibit "A" and made part of this bill.

(2) That after the execution and delivery of said notes to your orator, your orator transferred and assigned one of said notes to the defendant E. F., who is now the holder thereof, and your orator is still the holder of the other one of said notes, which is now due and wholly unpaid, and which the said C. D. fails and declines to pay.

(3) That on the .... day of ......, 19.., by deed of that date, the said C. D. conveyed ...... acres of said land to the defendant, G. H., which deed was duly admitted to record in the office of the clerk of said ...... Court in Deed Book No. .... at page ...., as will more fully appear by said deed itself, an attested copy of which and the endorsement of recordation

thereof are herewith filed, marked exhibit "B" and made part of this bill.

(4) Your orator further sheweth unto Your Honor, as will appear from said deed of conveyance, a copy of which is herewith filed as exhibit "A" that a lien is reserved on the face thereof to secure the payment of the balance of the purchase money for the sale of the said land, as evidenced by the notes given therefor, as aforesaid, and that the same, as your orator is advised, is enforceable in a court of equity.

Your orator therefore prays that the said C. D., E. F. and G. H. be made parties defendant to this bill and be required to answer the same (*add when necessary*, but answer under oath is hereby waived); that proper process issue; that a decree may be entered for the sale of said land to pay off and discharge said notes and the interest thereon, and the costs of this suit, decreeing first the sale of the land remaining unsold and still in the control and ownership of the said C. D., and if that be insufficient, then that part of said tract conveyed to the said G. H., or so much thereof as may be necessary, be sold; and grant unto your orator such other, further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

Adapted from Carlin's Hogg's Equity Procedure.

171. Decree Enforcing Vendor's Lien.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D. et als.

This cause came on this .... day of ......, 19.., to be heard upon the bill and exhibits therewith filed; upon the separate answers of C. D. and E. F. and the plaintiff's replication thereto; and the bill regularly taken for confessed and set for hearing as to the defendant, G. H., he still failing to appear, plead, answer or demur, though process has been duly served and executed upon the said last-named defendant; and was argued by counsel.

From all of which it doth appear to the court that there is now due and owing from the defendant, C. D., to the plaintiff, A. B., on account of the sale of the lands in the bill and proceedings mentioned, ... dollars (*in Virginia,* with interest thereon, from the .... day of ......, 19..; *in West Virginia,* which with interest thereon to date amounts to ...... dollars), after allowing a credit thereon for all payments and set-offs to which the defendant is in any wise entitled. It is, therefore, adjudged, ordered and decreed that the said C. D. do pay unto the said A. B. within thirty day from the rising of this court, the sum of ...... dollars with legal interest thereon from ...... until paid, and the costs of this suit. And it further appearing to the court that the said A. B. did reserve a lien upon the face of the deed conveying said lands to said C. D. to secure the payment of the unpaid purchase money, that the said sum of ...... dollars (*in Virginia* with interest as aforesaid) is the residue or unpaid part of said purchase money, and that by reason of said reservation of a lien upon the face of said deed the said sum of ...... dollars (with interest) constitutes and is the first and only lien on the lands in the bill and proceedings in this cause mentioned and described, it is, therefore, adjudged, ordered and decreed that, if the said C. D. shall fail to pay said sum of ...... dollars (with interest) within thirty days from the rising of this court, then said land be sold at public auction at the front door of the court house of this court upon the following terms: (*here insert the terms of sale*); and for the purpose of making said sale Q. M. is hereby appointed a special commissioner, but before doing so he shall advertise the time, terms and place of sale in some newspaper published in this county, for four successive weeks, and by posting notice thereof at the front door of the court house of this court for a like period. And before making such sale the said Q. M. shall enter into bond before the clerk of this court with sufficient surety, to be approved by said clerk, in the penalty of ...... dollars, conditioned for the faithful performance of his duties as such commissioner. And what the said Q. M. shall do under this decree he shall report to the next term of this court; until which time this cause is continued.

XXVIIB. Forms in Proceedings to Enforce a Mechanic's Lien

172. Bill to Enforce a Mechanic's Lien.

In the ...... Court of the ...... of ......, ...:

A. B. Co., a corporation organized and doing business under the laws of the State of ......
v.
C. D. Co., a corporation organized and doing business under the laws of the State of ......; E. F. Co., a corporation organized and doing business under the laws of the State of ......; and G. H. Co., Trustee, a corporation organized and doing business under the laws of the State of ......

In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That it is a corporation organized and doing business under the laws of the State of ......, with its principal office at ......;

(2) That its business, among other enterprises, consists of designing, manufacturing and supplying ornamental and miscellaneous iron work;

(3) That one of the defendants, the C. D. Company, is a corporation organized and doing business under the laws of the state of ......, its principal office being at ......, ...;

(4) That the E. F. Company, another of the defendants, is a corporation organized and doing business under the laws of the state of ......, with its principal office at ......, ...;

(5) That the G. H. Company, Trustee, another one of the

defendants, is a corporation organized and doing business under the laws of the state of ......, with its principal office at ......, ...;

(6) That on the .... day of ......, 19.., your orator entered into a contract with the C. D. Company to furnish the said C. D. Company, certain materials and labor, to-wit: certain ornamental and miscellaneous iron work and drawings and plans for the same, for a certain hotel building, known as the ...... Hotel, which was then being constructed or about to be constructed and erected by the said C. D. Company, as principal contractor, for the E. F. Company of ...... A true copy of the said contract which is embodied in a letter, bearing date ......, 19.., from your orator to the C. D. Co. and which was duly accepted by the C. D. Company is attached hereto, marked exhibit "A" and prayed to be read as part of this bill;

(7) That in accordance with the said C. D. Co., your orator as subcontractor did furnish the following materials and labor to the said C. D. Company for the said E. F. Company at the prices mentioned: (*here set forth a detailed statement of the materials furnished and labor done, together with the prices of each*).

(8) That the said materials and labor were used by the said C. D. Company in and about the construction of the said ...... Hotel located on the real estate of the said E. F. Company in ......, ... County and State of ......, which said real estate is more particularly described as follows: (*here describe the real estate fully*).

(9) That within .... days from the date your orator ceased to furnish said materials and labor as aforesaid, it caused to be recorded in the Office of the ...... Court of the ...... of ...... and State of ......, a notice of lien as provided by statute, stating that your orator claimed a lien upon the said property of the said E. F. Company to secure the payment of the sum of $.., together with a description of the property intended to be covered by the said lien sufficiently adequate for identification with the name of the owner of the said property as above described; that the said account was subscribed and sworn to by ......, President and Agent of your orator, and

was recorded in the Mechanic's Lien Book.., page .., in the Clerk's Office of the ...... Court of the ...... of ......, aforesaid, as required by law; all of which will more fully appear from a copy of the said notice of mechanic's lien filed herewith, marked exhibit "B" and asked to be read as part of this bill.

(10) That at the same time your orator caused to be served on the E. F. Co. and the C. D. Company a notice that your orator claimed a lien on the property of the said E. F. Co. as will more fully appear from the notice of said lien hereto attached marked exhibit "C" and asked to be read as a part hereof; that the only other lien on the property aforesaid is a deed of trust executed by the E. F. Company to the G. H. Co. Trustee, to secure a number of bonds in the aggregate principal sum of $.., together with interest on the same, which said deed of trust is recorded in the Clerk's Office aforesaid in ...... Book No. ......, at page ......

(11) That this suit to enforce the mechanic's lien aforesaid was commenced by a praecipe in the said Clerk's Office on or before the ...... day of ......, 19.., and within ...... months from the filing of the said account with the Clerk of the ...... Court aforesaid, and giving notice of the said lien as required by statute.

(12) That your orator now charges that there is now due and owing to it the sum of $..; that no part thereof has been paid by the said C. D. Company and that the same is a valid and subsisting lien against the land, property and appurtenances thereon hereinbefore described.

Your orator therefore prays that the said C. D. Company, the E. F. Company, and the G. H. Co., Trustee, may be made parties defendant to this bill and required to answer the same; that proper process issue: that your orator's debt may be duly ascertained; that the property aforesaid may be sold to pay off and satisfy your orator's claim for the said sum of $...... with interest thereon from the ...... day of ......, 19...., after the liens on the said property and their priorities have been duly ascertained, and that your orator may have all such further and general relief as in equity may seem meet and as in duty bound it will ever pray.

A. B. Company, a corporation,
By..........President.

Q. M.
A. R.
Counsel.

State of ......,
...... of ......, to-wit:

......, being first duly sworn, upon his oath says that he is the president of the A. B. Company, a corporation organized and doing business under the laws of the State of ......; that he is agent for the said A. B. Company for the purpose of making this affidavit; that the facts and allegations contained in the foregoing bill are true, except so far as they are therein stated to be on information, and that so far as they are stated to be on information he believes them to be true.

........President.
A. B. Company.

Taken, sworn and subscribed to before me and my notarial seal hereto affixed this ...... day of ......, 19..

....
Notary Public

My commission expires ......

Text page 713; Va. Code, §§ 6426-6442; Barnes' W. Va. Code Ch. 75.

173. Decree Enforcing Mechanic's Lien.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. Co., et als. } In Chancery. Decree.

This cause came on this ...... day of ......, 19.., to be heard upon the bill and exhibits therewith filed; upon the separate answers of C. D. Co., and the E. F. Company, and the plaintiff's replication thereto; and the bill regularly taken for confessed and set for hearing as to the defendant, the E. F.

Company, it still failing to appear, plead, answer or demur, though process has been duly served and executed upon it; and was argued by counsel.

On consideration of all which, the court is of opinion that the mechanics' lien mentioned and described in the complainant's bill and exhibits therewith filed is a valid and subsisting lien upon the property in said lien set forth, and that the said plaintiff is entitled to the relief prayed for. It is, therefore, adjudged, ordered and decreed that the said A. B. recover of the said defendant, the E. F. Company, (*Virginia*, the sum of $...... with interest thereon from the ...... day of ......, 19.. ; *West Virginia*, the sum of ...... dollars, including the interest thereon to this date,) that being the amount due said plaintiff on the mechanic's lien set forth and described in the plaintiff's bill, and filed as exhibit "A" therewith. It is further adjudged, ordered and decreed that, unless the said E. F. Company, or someone for it, do, within thirty days from the rising of this court, proceed to pay off and satisfy the aforesaid sum, together with the costs of this suit, (*add in W. Va.*, including a statute fee of ...... dollars as allowed by law) then Q. M., who is hereby appointed a special commissioner for that purpose, do proceed to sell, by way of public auction, at the front door of the court house of ......, in the State of ......, to the highest bidder, after having advertised the time, terms and place of sale for four successive weeks in some newspaper published in the county aforesaid, the following described tract or parcel of land, with the buildings and appurtenances thereto, known as .. ..., and described in exhibits "A" and "B" filed with plaintiff's bill, said lot or tract of land being situated in the ...... and State aforesaid and in ...... district, and at ...... of ......, and more particularly bounded as follows, to-wit: (*here describe the land*); said sale to be upon the following terms: (*here set forth the terms*). And out of the proceeds arising from said sale said special commissioner is directed to first pay the costs of this suit, and then the amount found and ascertained to be due the plaintiff as aforesaid (*in West Virginia add,* with interest thereon from this day), and any balance remaining in his hands over to the said E. F. Company. But before said special commissioner shall make any sale under this decree he shall first give bond in the penalty of ...... dollars, conditioned for the faithful performance of his duties as such special commissioner. And said special commissioner is directed to report his proceedings under this decree at the next term of this court, until which time this cause is continued.

Idem.

XXVIII. Forms Relating to Reports of Master Commissioners in Chancery

174. Notice of Commissioner in Pursuance of an Order of Reference.

Insert the title of the cause and so much of the order of reference, then add:

Commissioner's Office, ..., ... day of .... 19....:

The parties in the above entitled cause will take notice that on the ...... day of ......, 19...., at my office in the ...... of ......, I will proceed to execute the above decree, when and where they are required to attend with such books, papers, vouchers and evidence, as will enable me to comply with the said order of court. If the said proceedings be not completed on said date, they will be adjourned from day to day at the same time and place until completed.

M. G.,

Master Commissioner of the ...... Court of ......

Text pages 716, 725; Va. Code, §§ 6179-6186; Barnes' W. Va. Code, Ch. 129.

175. Report of a Commissioner in Chancery upon a Reference for an Account.

State of ......
...... of ......
ss.

A. B.
v. } In Chancery.
C. D.

Pending in the ...... Court of said ......:

To the Hon. ......, Judge of the said Court:

Pursuant to a decree of reference made and entered in this cause on the ...... day of ......, 19.., whereby the said cause was referred to the undersigned commissioner in chancery to take and state an account showing (*here copy from the decree the matters to be reported upon*), the undersigned gave due notice to the parties, as required by the terms of said decree, a true copy of which notice is hereto attached marked "Exhibit A" (*or*, as will appear by the return hereto attached); that on the ...... day of ......, 19.., he would proceed, at his office in the ...... of ......, county and State aforesaid, to execute said order; (*or*, but the plaintiff failing to appear, the examination and proceedings were adjourned until the ...... day of ......, 19.., and due notice thereof given to A. M., plaintiff's counsel, when the plaintiff appeared by his said counsel and the defendant in person, as well as by his counsel, L. F.; *or*, the proceedings having been thenceforward regularly adjourned from time to time, and being at length completed) whereupon your commissioner duly examined the witness produced by the parties touching the matters of inquiry before him, reducing their examination to writing in the form of depositions, which are herewith returned and made part of this report. And also examined the documentary proofs before your commissioner which are also herewith returned.

And thereupon, upon due consideration of all which your commissioner respectfully submits the following report:

(*Here present a concise statement of the findings of the commissioner on the various matters referred with a reference to the* *proof on which he bases the finding on each item or head of reference; or as may be most appropriate a general reference at the conclusion of the report as follows: Reference is made to schedules A., B., and C., hereto annexed or herewith filed as part of this report.)*

All of which is respectfully submitted this ...... day of ......, 19..

J. M. S.
Commissioner in Chancery.

Commissioner's Fee $....

Idem.

176. Notice that a Commissioner's Report Has Been Completed.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery.
C. D.

To E. F. and G. H. attorneys of record of the parties to the above cause:

You are hereby notified that the report made by me in said cause under the decree of reference entered therein was by me completed on the ...... day of ......, 19.., and the said report is now in my office, together with the evidence, where you may examine the same if you so desire.

A. N., Commissioner in Chancery,
for the ...... of ......, and State of ......

177. Exceptions to the Report of a Commissioner in Chancery.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery.
C. D. and E. F.

Exceptions taken by E. F., one of the above-named defendants, to the report of Commissioner J. M. S., to whom this cause was referred by decree made herein on the ...... day of ......, 19.., and which report bears date on the ...... day of ......, 19..

First Exception: For that said commissioner (*here set forth specifically the grounds of the exception*).

Second Exception: For that the said commissioner (*here set forth specifically the ground of the second exception, and continue until all exceptions are taken.*)

Wherefore the said defendant doth except to the said report of the said commissioner and prays that his said exceptions may be sustained, and that the said report may be corrected in the manner indicated by said exceptions (*or that the said report may be recommitted, or whatever is necessary to be done to meet the purposes of the exceptions*).

Q. M.
Counsel for the Defendant.

Idem; text page 735.

178. Decree Sustaining and Overruling Exceptions to Commissioner's Report.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. and E. F.
In Chancery. Decree.

This cause came on this ...... day of ......, 19.., to be heard upon the papers formerly read; the report of the commissioner, dated and filed on the ...... day of .., 19..; the exceptions of the complainant, A. B., and of the respondent, C. D., returned and filed with the said report; the exceptions of the said respondent filed on the .... day of ......, 19.., and has been returned more than ten days; and the depositions taken and filed on behalf of the said complainants since the former hearing of this cause; and was argued by counsel.

On consideration whereof, the court doth overrule all the exceptions of the said complainant to the said report, and doth overrule all the exceptions of the said respondent except so far as one of the said exceptions of said respondent refers to and embraces the first item in special statement F, made by the commissioner at the instance of the said respondent, to-wit: the item of ...... dollars in the said special statement, under date of the .... day of ......, 19.., for provisions furnished the complainant, the said A. B., as to which item and the interest thereon, the court is of the opinion that the same should have been allowed as a credit to the said C. D. and that the balance of ...... dollars, reported by the commissioners, as due to the complainant, should be reduced by the said sum of ...... dollars, and the interest thereon, amounting to $......, leaving the sum of ...... dollars due to the complainant on the .... day of ......, 19.., for which, in the opinion of the court, they are entitled to a decree, and the court doth confirm the said report in all other respects.

Idem; text page 743.

XXIX. Forms for Proceedings to Transfer Property of Persons under Disabilities out of State

179. Notice in a Proceeding to Transfer Property out of the State Belonging to Persons under Disability.

To Whom it May Concern:

Notice is hereby given that I, A. B., guardian of R. N., residents of the ...... of ...... and state of ......, where the said A. B., was duly appointed as guardian of said R. N., will make application to the ...... Court of the ...... of ......, ..., on the .... day of ......, 19.., for the entry of an order authorizing me, as guardian aforesaid, to transfer from the said state of ...... to the said state of ...... the proceeds of the sale of certain real estate formerly belonging to the said R. N. and located in the said ...... of ......, and state of ......, now invested in certain securities under the order of said court, and now held by C. D. appointed and qualified as such in said ...... of ......, and state of ......

A. B., Guardian of R. N.
for the ...... of ...... and State of ......
By Counsel.

A. M., Counsel.

Text page 769; Va. Code, §§ 5350-5356; Barnes' W. Va. Code, Ch. 84. Adapted from Carlin's Hogg's Equity Procedure.

180. Petition to Transfer Estate of Minor or Insane Person into Another State or Country.

In the matter of A. B., guardian of R. N.	Petition.

To the Hon. ......:

Judge of the ...... Court of the ...... of ......, ...:

The undersigned, your petitioner, A. B., respectfully represents:

(1) That he is the guardian (*if the property is that of an insane person use the term "committee" and make appropriate changes throughout*) of R. N., a minor and produces and files herewith a transcript from the records of the ...... Court of the ...... of ......, in the State of ......, a court of competent jurisdiction in the premises, duly certified in accordance with the requirements of the act of congress, showing that your orator has been duly appointed by said court of the State of ....., the guardian of said R. N., and that he has duly qualified as such guardian according to the laws of the State of ......, and has given bond with sufficient security for the performance of his trust.

(2) Your petitioner further sheweth unto your honor that he, your petitioner, as well as his said ward, both reside in the town of ...... in the State of ...... and that petitioner's said ward was entitled to the following described property in the ...... of ......, and State of ......, to-wit: (*here describe the same, and if the property is in the possession of the court so state*); which said property may be removed to another state without conflicting with any restriction or limitation thereon, and without impairing the right of his said ward thereto.

(3) Your petitioner further sheweth unto your honor that on the .... day of ......, 19.., C. D. of the town of ......, in the said County of ......, and said State of ......, was, by an order of this court, duly appointed guardian of the estate of the said R. N., in the said ...... of ......, and duly qualified as such.

(4) *In Virginia insert here*: Your petitioner further repre-

sents unto your honor that notice of the application for the removal by your petitioner of the said property has been published once a week for four successive weeks in the ......, a newspaper published in the said ...... or ......, and State of ......, as will more fully and at large appear by copies of said notices, and the affidavit of publication, herewith filed as part of this petition.

Your petitioner therefore prays that an order may be made authorizing him, your petitioner, as such guardian, to remove the said property of said ward to the State of ......; that the said C. D., as guardian aforesaid, may be made a party defendant to this petition, as well also as the said R. N.; that a suitable person be appointed guardian *ad litem* to the said infant defendant; that the said C. D. and the guardian *ad litem* may be required to answer this petition on oath; that an order may be entered directing and requiring said C. D., guardian as aforesaid, to pay and deliver to the petitioner all personal property and money in the hands or in his control belonging to the said ward; that the said petitioner may be authorized to sue for, recover and receive all money or personal property which may belong to his said ward, including the accruing rents of his real estate, in like manner as if he were appointed a guardian of such ward in this state, and likewise to remove the same to the said state of ......, in which your petitioner was appointed and qualified as guardian aforesaid; and grant unto your petitioner such other, further and general relief as to equity may seem meet, or as the nature of the case may require.

A. B.,
Guardian of R. N.
By Counsel.

Q. M., Counsel for Petitioner.

Idem.

181. Petition to Remove Proceeds of the Sale of Real Estate of an Infant out of the State.

In the matter
of A. B., guardian } Petition.
of R. N.

To the Hon. ......:

Judge of the ...... Court of the ...... of ......, ...:

The undersigned, your petitioner, A. B., respectfully represents:

(1) That he is the guardian (*if the property is that of an insane person use the term "committee" and make appropriate changes throughout*) of R. N., a minor and produces and files herewith a transcript from the records of the ...... Court of the ...... of ......, in the State of ......, a court of competent jurisdiction in the premises, duly certified in accordance with the requirements of the act of congress, showing that your orator has been duly appointed by said court of the State of ......, the guardian of the said R. N., and that he has duly qualified as such guardian according to the laws of the State of ......, and has given bond with sufficient security for the performance of his trust.

(2) That both and the said ward are residents of the town of ......, in the ...... of ...... and state of ......, and that petitioner's said ward was at one time the owner of a certain tract of land, which was sold, and the proceeds thereof invested in securities now held by and payable to C. D., the guardian of the said R. N., hereinafter mentioned, resident of this state, which securities consist in (*here set out the securities*); which said property of securities, the proceeds of the sale of said real estate, may be removed to another state without conflicting with any restriction or limitation thereon, and such removal will not impair the rights nor be prejudicial to the interests of your petitioner's said ward, nor those of any other person interested or to become interested therein.

(3) Your petitioner further represents that notice of the application for the removal by your petitioner of the proceeds of

the sale of said real estate has been given to the persons interested therein, by personal service on said parties, and that said notice has also been published once a week for four successive weeks in the ...... a newspaper published in the ...... of ......, and State of ......, as will more fully and at large appear by copies of said notices, and the service, and the affidavit of publication, herewith filed as part of this petition.

(4) That on the .... day of ......, 19.., C. D. of the town of ......, in the said ...... of ......, and state of ......, was, by an order of court, duly appointed guardian of the estate of the said R. N. in the said ...... of ......, and duly qualified as such.

(5) That no one is interested in the proceeds of the sale of the said real estate except said R. N., and his said guardian, C. D., resident in this State.

(6) That J. N. is a brother of the said R. N., and would be the heir-at-law of the said R. N., if the said R. N. were dead, and the said J. N. resides in this State and gives his consent to the removal of the proceeds of said real estate into said State of ......, as will more fully and at large appear by reference to his consent thereto given, in writing, which writing is herewith filed and made a part of this petition.

(7) That the proceeds of the sale of said real estate was invested in said securities above designated under and by virtue of an order of this court, entered of record on the .... day of ......, 19.., in a certain suit wherein ...... was plaintiff and ...... was defendant, as by the records of this court now on file, reference being had thereto, will more fully appear.

Your petitioner therefore prays that the said securities, proceeds of the sale of the said real estate, be paid and delivered to your petitioner, and that he be permitted to remove the same into the said State of ......, the State of the residence of your petitioner and his said ward; that the said C. D., resident guardian of the said R. N., aforesaid, and the said J. N. be made parties to this petition; that the said C. D. may be made a defendant hereto, and a suitable person appointed as guardian *ad litem* for the said C. D.; and grant unto the petitioner such other, further and general relief as to equity may seem meet.

A. B.,
Guardian of R. N.
By Counsel.

A. M., Counsel.

Idem.

XXX. Forms in Proceedings to Settle Estates

182a. Bill for the Administration of an Estate of an Intestate.

In the ...... Court of the ...... of ......, ...:

N. M., in his own right
and as Administrator of the
Estate of M. M., deceased } In Chancery. Bill.
v.
O. P. et als.

To the Hon. ......, Judge of the said Court:

Complaining shows unto your Honor your complainant, N. M., as administrator of the estate of M. M., deceased, and in his own right as one of the distributees and heirs at law of the said M. M., the following case:

(1) That M. M., who had been a resident of the ...... of ......, for many years, died in this city on the ...... day of ......, 19.., intestate, leaving as his distributees and heirs at law the following persons, viz.:

(*Here enumerate same, giving degree of relationship*) the last named being the infant children of B. M., a ...... of the said M. M., who died about ...... before the said M. M.

(2) The first ...... of the said persons are adults and live in the ...... of ...... The last ...... named are infants of tender years being about the ages of ...... and ...... respectively and they live with their mother, B. M., in the ...... of ......

(3) The said M. M. was twice married, one P. M. being his second wife; there was no issue born of this second marriage.

(4) The said M. M. left personal estate amounting to about ...... in value consisting of money in bank and a small quantity of household furniture. He also died seized and possessed of the following parcels of real estate situated in ...... (*here set out description of realty.*)

(5) Your complainant now further shows unto your Honor that at the request of all the adult distributees of the said decedent, your complainant qualified in the Honorable Court on the .... day of ......, 19.., as administrator of the said M. M. and gave bond as such with ...... as his surety. He files herewith a certificate of his qualification, marked "A" as a part of this bill.

(6) He has collected from the banks where it was deposited the money belonging to the said decedent and has deposited the same to his credit as administrator in the said M. M. He has caused an appraisement of the personal estate of said decedent to be made, and files herewith a certified copy thereof marked "B" as a part of this bill.

(7) Your complainant now further shows unto your Honor that it is his desire as it is that of all the adult distributees and hiers at law of the said M. M. to have a distribution and division of the said estate, personal and real, among the persons entitled thereto at the earliest moment practicable.

(8) Your complainant, as administrator, desires the aid and direction of the court in the administration and distribution of the personal estate of the decedent, and he is informed that it is his right to bring this suit for that purpose. He also desires, as a distributee of said decedent to have the said personal estate administered and distributed under the direction of the court. As one of the heirs at law of the decedent, he desires that the real estate of which the decedent died seized and possessed shall be partitioned and divided among the persons entitled thereto as speedily as possible, and he is advised that he has the right to bring this suit for that purpose; and he is fur-

ther advised that it is the familiar practice in the Court of Chancery to permit one suit for all these purposes.

(9) Your complainant therefore brings this suit as administrator of M. M., deceased, and in his own right as one of the distributees and heirs at law of the said decedent, for the purpose of having full administration of the said estate, both real and personal, and a distribution and division thereof among the several persons entitled thereto, under the supervision and direction of the court so that the same shall be forever binding on all persons interested therein.

(10) Your complainant alleges that the real estate of which the said M. M. died seized and possessed is obviously not susceptible of partition in kind among the persons entitled thereto, and it will be necessary to sell the same for division.

(11) Your complainant is informed that the said P. M., the widow, is entitled to her share of the said estate, both real and personal, as provided by law. It is your complainant's wish and he believes it is also the desire of all the other adult parties including the said widow that the said dower right shall be commuted and a gross sum be paid to her in lieu of dower and that the said widow is willing to accept in full of such commutation and all of her dower rights, a child's part of the said decedent's estate both real and personal. Your complainant is informed that this can only be done by consent of all parties, and that, if the adult parties consent, the court will consent for the infants if the court shall be of the opinion that it will be to their interests to do so.

In consideration whereof, and forasmuch as your complainant is remediless save in a court of equity where such matters are alone cognizable, your complainant prays as follows:

a. That the following persons may be made parties defendant to this bill, and may be required to answer the same (*in Virginia insert,* but not on oath, answers under oath being expressly waived as to all of the defendants save as to such as by law are required to answer under oath);

b. That a proper guardian *ad litem* may be assigned to the said infant defendants to defend their interests in this suit and that he as well as such of the infant defendants as are over fourteen years of age, may be required to answer this bill on oath in proper person;

c. That proper process issue;

d. That the estate of the said M. M., both personal and real may be administered by the court in this cause and proper distribution and division thereof be made among the distributees and heirs at law of the said decedent;

e. That your complainant, as administrator of the said M. M. may be permitted to settle before this court in the usual manner his accounts as such administrator, and in the administration of the personal estate of such decedent may have the guidance and direction and protection of the court;

f. That the debts due by the said decedent or his estate may be ascertained and paid out of the personal estate, and that the residue of the said personal estate may be distributed among the distributees according to their several interests;

g. That the real estate of which the said decedent died seized and possessed may be partitioned and divided among his heirs at law, and if said real estate be not susceptible of partition in kind, that it may be sold and the proceeds thereof divided among the said persons according to their several interests;

h. That the dower rights of the said P. M. may be assigned to her in the proper manner; and, if it be possible as set out in said bill, that the said dower right may be commuted and a gross sum be paid to her in lieu of dower, such gross sum to be a child's part of the estate;

i. That a reasonable and proper fee may be allowed by the court to the counsel for your complainant for his services in instituting and prosecuting this suit, and inasmuch as it has been agreed between all the adult parties to this suit and the counsel for your complainant who represents all the said parties, that the amount of the said counsel's fee shall be fixed by the court in this cause. Your complainant prays that the court will fix the said fee and pay the same out of the fund to arise in this cause in such manner that the burden shall fall equally on all parties;

j. That such other further and general relief may be granted to your complainant as the nature of his case may require or to equity may seem meet. And that process may issue, etc.

And your complainant will ever pray, etc.

N. M.,
By Counsel.

A. M., Counsel.

Text page 774.

182b. Bill to Construe a Will.

In the ...... Court of the ...... of ......, ...:

A. B., as Executor of the last will and testament of E. F., dec'd.
v.
.... } In Chancery. Bill.

To the Hon. ......, Judge of the said Court:

Your orator respectfully represents:

(1) That on the .... day of ......, 19.., one E. F. died seized of an estate of the estimated value of ...... dollars, leaving a will duly attested, which, on the .... day of ......, 19.., was duly admitted to probate (*state where and how probated*) and your orator qualified as executor, as will more fully appear from the order of probate thereof, a copy of which is herewith filed as exhibit "A" and made part of this bill. The terms and provisions of said will will more fully and at large appear from said will, an attested copy of which is herewith filed, marked exhibit "B" and made part of this bill.

(2) Your orator as executor of said estate has paid all lawful claims against the said estate, and all legacies provided for in said will, and on the day of ......, 19.., duly rendered an account of all his proceedings in said settlement of said estate to the ...... court of the state of ......, which accounts and settlements were duly approved and confirmed by said court.

(3) That after the payment of the legal claims against said estate, and of the legacies given by said will, and of the expenses

of the settlement of said estate, there remains in the hands of your orator (*state what remains if anything.*)

(4) That by reason of the failure of the residuary estate as contemplated by the sixteenth section, the plaintiff is without funds or the means of raising them to keep the house named in the said sixteenth section properly insured, or to make the repairs upon said house necessary to keep it in proper and tenantable condition, or to pay the taxes lawfully assessed against the premises, or the assessments properly laid thereon for local and municipal purposes, and the taxes already assessed against said premises have remained unpaid for a series of years and now amount to $......, bearing interest at the rate of ...... per cent.

(5) That ......, ... and ......, named in the sixteenth section, have both deceased since the death of said testatrix, and their interests under the provisions of the will have ceased.

(6) That the following persons claim to have some interest in the property in the hands of your orator, to-wit: (naming them), as next of kin and heirs of said E. F., deceased.

(7) That various questions have arisen and various claims have been made by the different persons hereinbefore named relative to the construction, validity and legal effect of certain of the provisions contained in said will and relating to the distribution of the residuary funds, among which are the following: (*set out questions in full*).

Your orator is ready and willing to deliver said estate as the same shall appear of right to belong, but he is in doubt as to said several questions, and as to the true construction of the clauses and paragraphs of said will to which said questions relate; and by reason of the conflicting claims of the various parties in interest and of the uncertainty and ambiguity of the various clauses of said will, he is exposed to sundry suits by said claimants, and to loss and damage therefrom.

The plaintiff therefore prays that (*name the parties*) be made parties defendant to this bill and be required to answer the same (*waive oath if necessary*); that proper process issue; that your orator may have the advice and protection of the court in giving a construction to the several clauses and provisions of said will in respect to which have arisen said various claims and questions as above specified and set forth; that your orator may have a decree entered in this cause adjudicating and settling the construction of said will, and directing in what manner he shall carry its provisions into execution, so that he may execute the same properly and with safety to himself; and that your orator may have such other and further relief as the court may see fit to grant.

A. B., as Executor of the last will and testament of
E. F., Deceased.
By Counsel.

Q. M., Counsel.

If the suit is by an administrator with the will annexed, so state and make appropriate changes; if by administrator de bonis non, allege the qualification and death, or resignation, etc., of the former administrator.

Adapted from Carlin's Hogg's Equity Procedure.

183. Answer of Heirs and Distributees in a Suit to Administer an Estate.

In the ...... Court of the ...... of ......, ...:

N. M., in his own right
and as Administrator of
the Estate of M. M., deceased } In Chancery. Answer.
v.
O. P. et als.

The joint answer of O. P., L. M., etc., to a bill of complaint exhibited against them and others in the ...... Court of ....., by N. M. as administrator of the estate of M. M., deceased, and in his own right.

These respondents, for answer to the said bill, say:

(1) That it is true, as alleged therein, that these respondents and the said N. M. are the children of M. M., deceased, and all of his children who survived him, a son of said M. M., viz.: R. M., having died about one month before his father, leaving a

widow and two infant children whose names, as these respondents believe, are correctly set out in said Bill.

(2) These respondents further say that the statements of said Bill as to the death of said M. M. are true, and they believe that the statements thereof as to his estate, real and personal, and its location and value, etc., are also true; but they are informed that the court will in the usual manner ascertain the whole of said estate and its value, before distribution and division thereof is made.

(3) These respondents further say that they are informed that the persons entitled to the said estate are entitled to have the same distributed and divided among them at the earliest moment permitted by the law. These respondents desire that such distribution and division shall be made by the court in this cause, and they unite in all the prayers of the bill to that end.

(4) These respondents further say that they all desire that the dower right of the said P. M. in the real estate of which said M. M. died seized and possessed may be commuted and they are informed that the widow is willing to take a child's part in full settlement of all claims for her dower, and a gross sum paid to her in lieu thereof and they hereby consent to such commutation if the court shall be of opinion that it will be to the interest of the infant defendant to permit such commutation.

(5) Further answering, these respondents say that it is true as alleged in said bill, that all the adult parties to this cause have agreed that the counsel for the plaintiff shall act as counsel for all of them in the institution and prosecution of this suit and have also agreed with said counsel that his fee for such services shall be fixed by the court in this cause and be paid out of the fund to arise herein so that it may fall equally on all parties and these respondents unite in the prayer of said bill that the court will so fix and pay said fee.

And now having fully answered, these respondents pray to be hence dismissed, etc.

And they will ever pray, etc.

O. P., L. M., etc.
By Counsel.

P. W., Counsel.

184. Answer of Widow in a Suit to Administer an Estate.

In the ...... Court of the ...... of ......, ...:

N. M., in his own right
and as Administrator of
the Estate of M. M., deceased } In Chancery. Bill.
v.
O. P. et als.

The separate answer of P. M., to a bill of complaint exhibited against her and others in the ...... Court of the ...... of ......, by N. M., as administrator of the estate of M. M., deceased, and in his own right.

This respondent, for answer to the said bill, says:

(1) That it is true as alleged in the said bill, that she is the widow of M. M., deceased, she having been his second wife. That it is also true, as alleged, that there was no issue of her marriage with the said M. M.

(2) This respondent knows that the statement of said bill as to the death of the said M. M. is true, and she believes that the statements thereof as to his estate and the names of his children are true; but she asks the court to ascertain the whole of the said estate, real and personal, and its value, in the usual manner.

(3) This respondent says that she is informed and believes that she as the widow of said M. M. is entitled to her distributive share of his personal estate and to her dower in his real estate, as provided by law. She is willing that her said dower right shall be commuted and a gross sum paid to her in lieu thereof, and she hereby gives her consent thereto if the other parties will consent and the court shall be of opinion that it will be to the interest of the infant defendants to permit such commutation. And she is willing to take a child's part in full of her dower interest.

(4) Further answering, this respondent says that it is true, as alleged in said Bill, that all the adult parties to this cause have agreed that the counsel for the plaintiff shall act as counsel for

all of them in the institution and prosecution of this suit, and have also agreed with said counsel that his fee for such services shall be fixed by the court in this cause and be paid out of the fund to arise herein, so that it may fall equally on all of said parties; and this respondent unites in the prayer of said bill that the court will so fix and pay said fee.

And now having fully answered, this respondent prays to be hence dismissed, etc.

And she will ever pray, etc.

P. M.,
By Counsel.

P. W., Counsel.

185a. Decree of Reference in a Suit to Administer the Estate of an Intestate Brought by the Administrator.

In the ...... Court of the ...... of ....:

N. M., in his own right
and as Administrator of
the Estate of M. M., deceased
v.
O. P. et als.
} In Chancery. Decree.

This day, by his counsel came the plaintiff, and by leave of court, filed his bill and exhibits therewith in open court; and on his motion, A. D., a discreet and competent attorney-at-law, is assigned as guardian *ad litem* to the defendants, G. M. and F. M., infants over the age of fourteen years, to defend their interests in this suit. And then came the said A. D. and by leave of court filed in open court the joint answer of the said infant defendants by him as such guardian *ad litem*, and his own answer as guardian *ad litem* for said infants, to the plaintiff's bill. And then came the infant defendants, G. M. and F. M., and by leave of court filed their joint answers. Then came the defendant, P. M., by her counsel and by leave of court filed in open court her separate answer to the said bill.

Then came the defendants, O. P., L. M., etc., by their counsel, and by leave of court filed in open court their joint answer to the said bill.

And the plaintiff, by his counsel declined to reply to any of the said answers.

And thereupon, on motion of the plaintiff and with the consent of all adult defendants by their counsel, and of the said infant defendants by their guardian *ad litem,* this cause was set for hearing and placed on the argument docket of the court.

And then by like consent of the parties aforesaid in the manner aforesaid, this cause came on this day to be heard on the plaintiff's bill and the exhibits therewith, and on the several answers of the defendants as above set out, and was argued by counsel for adult parties and by the guardian *ad litem* for the infant defendants.

On consideration whereof, the court doth adjudge, order and decree that this cause be referred to one of the commissioners of this court, who is directed to make the following inquiries and take the following accounts and report thereon to the court; and he will also report to the court any other matter, specially stated, deemed pertinent by himself or required by any party to be stated;

1. An account of the personal estate of M. M., deceased, which came or should have come to the hands of N. M., his administrator.

2. An account of the transactions of N. M., as administrator of M. M., deceased, from the date of his qualification as such to the latest date practicable.

3. An account of the debts and demands outstanding against the said M. M. or his estate, with the priorities among them, and the names of the persons to whom they are due.

4. Who are the persons entitled to the personal estate of M. M., deceased; what are their several shares or interests therein; and whether all such persons are properly before the court in this cause.

5. An account of the real estate of which M. M. died seized and possessed; where the same is situated; and what is its fee simple and annual rental value.

6. Who are the persons entitled to the said real estate; what

are their respective shares or interests therein; and whether all such persons are properly before the court in this cause.

7. Whether the said real estate can be conveniently partitioned in kind among the persons entitled thereto in either of the modes prescribed by the statute.

8. If partition in kind as aforesaid cannot be conveniently made, whether anyone of said persons will take the whole of the said real estate and pay to the others such sums of money as their interests therein may entitle them to receive.

9. If partition in kind as aforesaid cannot be conveniently made, and none of said persons will take the whole subject and pay the others for their shares, whether the interest of the persons who are entitled to the said real estate will be promoted, by a sale of the whole thereof and a distribution of the proceeds among them; or by the allotment of a part and a sale of the residue.

10. What would be a reasonable fee to be allowed by the Court out of the fund to arise in this cause to the Counsel for the adult parties (as asked for in the Bill and answers) for instituting and prosecuting this suit; and whether such fee should be charged against the whole fund, so as to fall equally on all parties, infant and adult, or only against the shares of the adult parties.

The commissioner shall give notice of the time and place of making the said inquiries and taking the said accounts to the counsel for the adult parties and to the guardian *ad litem* for the infants. And before executing the third of the foregoing enquiries he shall give notice of the time and place thereof by publishing such notice once a week for four successive weeks in one of the newspapers published in ......, which publication shall be equivalent to personal service of such notice on all persons interested.

185b. Decree of Reference to Take an Account in a Suit against the Estate of a Decedent by a Creditor.

In the ...... Court of the ...... of ......, ...:

A. B. who sues on behalf of himself and all other creditors of M. M., deceased. v. C. D. et als.	In Chancery.	Decree.

This cause came on this .... day of ......, 19.., to be heard upon the process duly served upon the defendants; upon the bill regularly filed at rules, the decree *nisi* thereon, and taken for confessed and set for hearing at rules by the plaintiff as to the defendants, C. D. and E. F.; upon the separate answer of G. H., as administrator of M. M., deceased, and general replication thereto; upon the answer of M. N., guardian *ad litem* of the infant defendants, L. K. and P. K., who are under the age of fourteen, and the general replication thereto; upon the depositions on behalf of the plaintiff taken and filed in the cause; and was argued by counsel.

Upon consideration of all which it is adjudged, ordered and decreed that this cause be and the same is hereby referred to T. N., one of the commissioners in chancery of this court, to take, state and report an account, showing:

First, what personal estate the said M. M. owned at the time of his death, the character and value thereof;

Second, what disposition, if any, was made of said personal estate by the defendant, G. H., as administrator of M. M., deceased, and how much, if any, of said personal estate is now in the hands of said G. H. as administrator, available for the payment of any debts owing from the estate of said M. M., deceased;

Third, a settlement of the administration of the estate of said decedent by said G. H., as his administrator;

Fourth, what debts said M. M. owed at the time of his death, to whom they are payable, their nature and their respective amounts and priorities;

Fifth, what real estate was owned by the said M. M. at the time of his death, its quantity, description, value and location;

Sixth, and such other matters as any party in interest may require, the same being pertinent, or such other matters as said commissioner himself may deem pertinent, whether so requested or not.

But before proceeding to take said account (*in West Virginia, insert*: the said commissioner is hereby directed to see that the clerk of the circuit court of this county shall publish the notice to creditors of said decedent as required by ch. 86, section 8, of the Code of West Virginia, and) said commissioner shall give notice to all the parties to this suit of the time and place of taking the said account by publication thereof for ......, in some newspaper published in the ...... of ......, (*add in Virginia*, which shall be equivalent to personal service of such notice on all persons interested) or by personal service of such notice on the parties or their counsel.

And what the said commissioner shall do under this decree he shall report to the next term of this court, until which time this cause is continued.

186a. Decree for Distribution of Personal Estate by Personal Representative.

In the ...... Court of the ...... of ......, ...:

P. F. and R. F., as Executor of the last will and testament of N. F., deceased. v. E. F., as Executor of the last will and testament of C. D., deceased.	In Chancery.	Decree.

This cause came on this .... day of ......, 19.., to be further heard on the papers formerly read, former orders and decrees entered herein, and the report of the commissioner made in pursuance of the order of the .... day of ......, 19.., entered in this cause, to which report no exception has been filed, and was argued by counsel; on consideration whereof the court doth approve and confirm said report and doth further adjudge, order and decree that the defendant, E. F., as executor of the last will and testament of C. D., deceased, do pay to the plaintiff, P. F., the sum of $......, with interest at the rate of six per centum per annum from the ...... day of ......, 19...., until paid; to R. F. as executor of the last will and testament of N. F., deceased, the sum of $...... with interest at the rate of six per centum per annum from the .... day of ......, 19.. until paid. But the said P. F. and R. R., as executors aforesaid, shall respectively enter into bond, with sufficient security, in the clerk's office of this court in a penalty equal to double the sums decreed to them respectively, payable to the defendant, E. F., as Executor of C. D., deceased, conditioned to refund a due proportion of any debts or demands which may hereafter appear against the estate of the said C. D., deceased, and of the costs attending the recovery of such debts or demands.

186b. Decree Authorizing Distribution of Estate.

In the ...... Court of the ...... of ......, ...:

N. M., in his own right and
as Administrator of the Estate
of M. M., deceased.
v.
O. P. et als.
} In Chancery. Decree.

It appearing to the court from the certificate of the editor of the ......, a newspaper published in the city of ......, and from the affidavit of E. S., clerk of this court, that a copy of the order entered in this suit on the .... day of ......, 19.., requiring the creditors of M. M., deceased, and all persons asserting demands against his estate to show cause, if any they could, before this court on the .... day of ......, 19.., why the court should not require the payment and delivery of said decedent's estate to his distributees by his administrator, without refunding bonds, was duly published in the said ...... newspaper once a week for four successive weeks, commencing ...., 19.., and that, another copy of said order was duly posted, as required by law, at the front door of the Court House of the ...... Court of ...... on the first Mondays in .... and ......, 19.., and no creditor of said M. M., deceased, or of his estate, and no person asserting any claim against said estate, having appeared to show any cause to the contrary, and all claims which have been proved or asserted against said decedent having been paid.

On the motion of O. P., one of the distributees of said ...... deceased, it is adjudged, ordered and decreed that the plaintiff, N. M., Administrator of M. M., deceased, do proceed as speedily as he may be able so to do, with due regard to the rights and interests of all of said distributees, to make payment and delivery of the money and estate of the said M. M., deceased, to his several adult distributees, according to their respective rights as shown by the report of Commissioner D. G., filed in this cause on the .... day of ......, 19.., and as set out in the scheme of distribution of the balance of money coming into the hands of said N. M. as administrator, as aforesaid, and the scheme of distribution of the rents in the hands of said N. M., and that the said administrator be, and he is hereby directed and ordered in making such payments and delivery, to require no refunding bonds from said distributees of the said M. M., deceased.

But as to the infants, G. M., and F. M., the said administrator, M. M., is directed to deposit their respective shares to the credit of the court in this cause in the ...... Bank of ......, and file the certificate of deposit therefore with the papers in this cause.

187. Decree against Personal Representative of the Estate of a Decedent.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
E. F. as Admr. et als. } In Chancery. Decree.

This cause came on this day further to be heard on the papers formerly read, former orders and decrees entered herein, and the report of the commissioner made in pursuance of the order of the .... day of ......, 19.., entered in this cause and was argued by counsel; on consideration of all which the court is of opinion that the plaintiff is entitled to the relief prayed for in his bill against E. F., as the administrator of the estate of C. D., deceased. It is therefore adjudged, ordered and decreed that the said A. B. do recover of and from the said W. F. as administrator of the estate of C. D., deceased, to be paid out of the personal estate of said decedent, which shall or has come to the hands of the said E. F., administrator as aforesaid, the sum of ...... dollars with legal interest thereon from this day until paid, and the costs of this suit.

(*Here add any other or further provisions to the decree that the nature of the case may warrant or the pleadings and papers in the cause may require.*)

188. Report of Administrator as to Distribution.

In the ...... Court of the ...... of ......, ...:

M. N., in his own right and as Administrator of the estate of M. M., deceased. v. O. P. et als.	In Chancery. Report of Administrator.

The undersigned, N. M., administrator of the estate of M. M., deceased, respectfully reports that, in pursuance of the order entered in this cause on the ...... day of ......, 19...., on the ...... day of ...... he deposited as required by said order the sum of $......, to the credit of the court in this cause in the ...... Bank of ......, that being the full proportions of rents and personal property due to the infants, M. and N.; which certificate he returns herewith as a part of his report.

He further reports that in pursuance of said order he has paid to all of the parties out of the rents in his hands, the following sums and in the following proportions, in full of their respective interests:

Total amount of rents $...., which he paid out as follows:

And of the personal property in his hands amounting to $.... he has paid the same out to the following named:

N. M., as administrator, as aforesaid, holds in his hands receipts from the respective parties for all of the said amounts, and he respectfully asks that his action in paying the money out as directed by the court may be approved, and his final account spread upon the accounts of fiduciaries.

Respectfully submitted,
N. M.

XXXIA. Forms in Attachment Proceedings in Virginia

(*See also W. Va. Forms*)

189a. (Va.) Petition for Attachment by a Clerk for a Debt or Damages for a Breach of Contract or for a Wrong Where the Claim Exceeds $20.00.

In the ...... Court of the ...... of ......, ...:

A. B., Plaintiff
v.
C. D., Principal Defendant
E. F., Co-Defendant.
} In Attachment. Petition.

To the Hon. ......, Judge of the said Court:

Your petitioner, A. B., respectfully shows unto your honor that the said principal defendant, C. D., is justly and truly indebted to the plaintiff in the sum of ...... dollars ($..) which amount was due and payable on the ...... day of ......, 19.., the full particulars of which indebtedness are as follows: (*here set forth plaintiff's claim with such certainty as will give the adverse party reasonable notice of the particulars thereof; the certainty required of notice of motion under Va. Code, 1924, § 6046, will be sufficient*), and that the plaintiff is entitled to, or ought to recover of said principal defendant, at the least the said sum of ...... Dollars, with interest thereon from the ...... day of ......, 19.., until paid.

Your petitioner further alleges that the said principal defendant, C. D.: (*here insert one or more of the following grounds of attachment conjunctively, except the intent in grounds four and five may be stated in the alternative.*)

(1) Is a foreign corporation (*or,* is not a resident of the State of Virginia) and has estate or debts owing to it (him) within the county (*or* city) of ......, (*and,* or being a non-resident of

the State of Virginia, is entitled to the benefit of *describe lien and property in the county or city in which the lien or property is located*) and,

(2) Is removing (*and,* or is about to remove) out of the State of Virginia with intent to change his (its) domicile; and,

(3) Intends to remove (*and,* or is removing, *and,* or has removed) the said (*here describe specific property, if any, sued for; and* or his own estate, *and,* or the proceeds of the sale of his property, *and,* or a material part of such estate or proceeds) out of the State of Virginia, so that there will probably not be therein effects of the said C. D. sufficient to satisfy the claim when judgment is obtained therefor, should only the ordinary process of law be used to obtain the judgment; and,

(4) Is converting (*and,* or is about to convert, *and,* or has converted) his property of whatever kind, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay or defraud his creditors; and/or

(5) Has assigned or disposed of, (*and,* or is about to assign or dispose of) his estate or some part thereof, with intent to hinder, delay or defraud his creditors; and

(6) Has absconded (*and,* or is about to abscond) from the State of Virginia, (*and,* or has concealed himself therein to the injury of his creditors, *and* or is a fugitive from justice).

Wherefore, Your petitioner asks for an attachment against the estate, real and personal, of said principal defendant, in the State of Virginia, and more particularly against the real and personal property of said principal defendant now in the possession and under the control of E. F., to-wit: (*describe property; or,* who is also indebted to the said C. D. in the sum of $. . . .) and who, your petitioner prays, may be made co-defendant to these proceedings and required to answer under oath and disclose his indebtedness to the said C. D. and what property belonging to the principal defendant is now in his possession or under his control; that the said real and personal property, or so much thereof as may be necessary to satisfy the claim of your petitioner be sold by order of this court and applied in satisfaction thereof, and that a receiver may be appointed to take charge of the attached property.

And that your petitioner may have such other, further and general relief as the nature of the case may require.

And your petitioner will ever pray, etc.

A. B.

(or his agent or some person cognizant of the facts herein stated).

State of Virginia,
...... of ......, to-wit:

I, ..., a ......, for the ...... aforesaid, do hereby certify that ...... has personally appeared before me in my state and ...... aforesaid and made oath that he is cognizant of the facts stated in the foregoing petition and that they are true. (*Or, if affidavit is made by agent or other person* made oath before me in my said county that he verily believes the matters and things alleged in the foregoing petition are true).

Given under my hand this ...... day of ......, 19..

....
Official character.

Text pages 818, 828; Va. Code §§ 6379 and 6383.

189b. (Va.) Petition for Attachment by a Clerk for a Debt Which Is Not Due and Payable.

In the ...... Court of the ...... of ......, Virginia:

A. B., Plaintiff
v.
C. D., Principal Defendant
E. F., Co-Defendant.
} In Attachment. Petition.

To the Hon. ...., Judge of the said Court.

Your petitioner, A. B., respectfully shows unto Your Honor that the said principal defendant, C. D., is justly and truly indebted to the plaintiff in the sum of ...... Dollars, which amount is not due but which will be due and payable on the ...... day of ......, 19.., the full particulars of which indebtedness are as follows: (*here set forth plaintiff's claim with such certainty as will give the adverse party reasonable notice of* *the particulars thereof; the certainty required of notice of motion under Va. Code, 1924, § 6046, will be sufficient*); that on the ...... day of ......, 19.., the plaintiff will be entitled to, or ought to recover of said principal defendant at the least the said sum of ...... Dollars, with interest thereon from the ...... day of ......, 19.., until paid.

Your petitioner further alleges that the said principal defendant, C. D. (*here insert one or more grounds of attachment as in Form No. 189a.*)

Wherefore, Your petitioner asks for an attachment against the estate, real and personal, of said principal defendant in the State of Virginia, and more particularly against the real and personal property of said principal defendant now in the possession of and under the control of E. F., to wit, (*describe property, or* who is also indebted to the said C. D., in the sum of ...... Dollars) and who your petitioner prays may be made co-defendant to these proceedings and required to answer under oath and disclose his indebtedness to the said C. D. and what property belonging to the principal defendant is now in his possession or under his control; that the said real and personal property, or so much thereof as may be necessary to satisfy the claim of your petitioner be sold by order of this court and applied in satisfaction thereof, and that a receiver may be appointed to take charge of the attached property.

And your petitioner may have such other further and general relief as the nature of his case may require.

And your petitioner will ever pray, etc.

A. B.

(*or his agent or some person cognizant of facts herein stated*).

Append affidavit as in Form No. 189a.

Idem.

189c. (Va.) Petition for Attachment by a Clerk for the Recovery of Specific Property Where the Claim Exceeds $20.00.

In the ...... Court of the ...... of ......, ...:

A. B., Plaintiff v. C. D., Principal Defendant E. F., Co-Defendant.	In Attachment.	Petition.

To the Hon. ......, Judge of the said Court:

Your petitioner, A. B., respectfully shows that the said principal defendant, C. D., has in his possession the following specific property belonging to your petitioner: (*here state the nature of the property claimed*) of the estimated value of ...... dollars, in which the character of the estate claimed by your petitioner is ...... and for the detention of which your petitioner claims to be entitled to recover the sum of ...... dollars.

Your petitioner further alleges that the said principal defendant (*here insert one or more grounds of attachment as in Form No. 189a*).

Wherefore, Your petitioner asks for an attachment against the above described specific personal property and also the estate, real and personal, of said principal defendant, C. D., in the State of Virginia, and more particularly against the real and personal property of said defendant now in the possession and under the control of E. F., to wit, (*describe property, or* who is also indebted to said C. D. in the said sum of ...... dollars,) and who your petitioner prays may be made co-defendant to these proceedings and required to answer and disclose his indebtedness to the said C. D. and what property belonging to the principal defendant is now in his possession or under his control; that judgment may be entered in favor of your petitioner for the above described specific personal property and for damages for its detention; that the said real and personal property of said principal defendant, or so much thereof as may be necessary to satisfy the claim of your petitioner for damages for the detention of said specific personal property, be sold by order of this Court and applied in satisfaction thereof and that a receiver may be appointed to take charge of the attached property.

And that your petitioner may have such other, further and general relief as the nature of his case may require.

And your petitioner will ever pray, etc.

A. B.

(*or his agent or some person cognizant of the facts.*)

Append affidavit as in Form No. 189a.

Idem.

190a. (Va.) Attachment by a Clerk for the Recovery of Specific Property.

Commonwealth of Virginia:

County (*or,* City) of ......, to-wit:

To the Sheriff (*or,* Sergeant) or any Constable of said County (*or,* City)—Greetings:

Whereas, A. B., plaintiff in this attachment, did this day in the Clerk's Office of the ...... Court of the ...... of ......, file a petition duly sworn, according to law for an attachment against C. D., as principal defendant, and E. F., as co-defendant for the recovery of specific property before me, Y. Z., clerk of our said court in the county (*or,* city) of ......, State of Virginia, the said petition alleging that C. D., the principal defendant had in his possession the following specific personal property belonging to the plaintiff A. B., of the estimated value of ...... dollars, to-wit: (*here describe the property*) and in which the character of the estate claimed by the plaintiff A. B. is ...... and for the detention of which the plaintiff claims to be entitled to recover the sum of ...... dollars; and suggesting that at the time of the service of this attachment E. F. will be indebted to the said C. D. and will have in his possession and under his control other real and personal estate belonging to the said C. D. and alleging that C. D. the said principal defendant (*here insert grounds of attachment as in petition.*)

Therefore, we command you in the name of the Commonwealth that you attach the aforesaid ...... and in addition so much of the estate, real and personal, of the said principal defendant, C. D., as shall be necessary to satisfy the claim of the said plaintiff, A. B., for damages for the detention of the aforesaid ...... and the costs of this attachment; and upon the execution by the plaintiff or some other person for him of the bond required by law that you take possession of the tangible personal property directed to be attached as aforesaid and keep such estate so attached in your possession to satisfy any judgment that may be recovered by the plaintiff in this attachment; that you summon the said principal defendant, C. D. and the said co-defendant, E. F. if they or any of them be found within your bailiwick or any county or city wherein you may have seized property under and by virtue of this writ, to appear before the ..... Court of ..... at the courthouse thereof on ...... and answer said petition or state the grounds of their defence thereto; that you further summon the said E. F., co-defendant, to appear before the ...... Court of ...... at the courthouse thereof on ...... in person and submit to an examination on oath touching his indebtedness to the said principal defendant at the time of the service of this attachment; and the personal property of the said defendant in his possession at the said time; or, with the consent of the court first obtained, file an answer in writing under oath, stating whether or not he was so indebted, and if so, the amount thereof and the time of maturity, or whether he so had in his possession any personal property belonging to the principal defendant, and if so, the nature and value thereof.

And that you make return hereof on the ...... day of ......, 19.., to our said Court of ......

Witness Y. Z., clerk of our said court at the court house thereof in the county (*or,* city) and state aforesaid, this ...... day of ......, 19..

Y. Z., Clerk.

Text pages 818, 829; Va. Code, § 6386.

190b. (Va.) Attachment by Clerk for a Debt Which Is Not Due and Payable.

Commonwealth of Virginia,
...... of ......, to-wit:

To the Sheriff (*or*, Sergeant) or any Constable of said County (*or*, City)—Greetings:

Whereas A. B., plaintiff in this attachment, did in the Clerk's Office of the ...... Court of ......, this day, file a petition duly sworn according to law, for an attachment against C. D. as principal defendant and E. F. as co-defendant before me, Y. Z., clerk of our said court in the county (*or* city) of ......, State of Virginia, the said petition alleging that the principal debtor, C. D., is justly and truly indebted to the plaintiff in the sum of ...... dollars which amount is not yet due but will be due and payable on the .... day of ......, 19..; that the particulars of the demand are as follows: ......; and that the plaintiff is entitled to, or ought to, recover of the said principal defendant at the least said sum of ...... dollars with interest thereon from the ...... day of ...... until paid; and suggesting that at the time of the service of this attachment E. F. will be indebted to the said C. D. and will have in his possession and under his control real and personal estate belonging to the said C. D. to-wit: ......; and alleging that (*here insert grounds of attachment as given in petition.*)

Therefore, we command you in the name of the Commonwealth that you attach the property described aforesaid, to-wit: ......, and so much of the lands, tenements, goods, chattels, moneys and effects of the said principal defendant, C. D., not exempt from execution, as will be sufficient to satisfy the plaintiff's demand of ...... dollars, and the cost of this attachment; and upon the execution by the plaintiff or some other person for him of the bond required by law, that you take possession of the tangible personal property directed to be attached as aforesaid, and keep such estate so attached in your possession to satisfy any judgment that may be recovered by the plaintiff in this attachment; that you summon the said principal defendant, C. D., and the said co-defendant, E. F., if they or any of them be found within your bailiwick or any county or city wherein you may have seized property under and by virtue of this writ to appear before our said ...... Court of ...... at the courthouse thereof on ...... and answer said petition or state the grounds of their defense thereto; that you further summon the said E. F., co-defendant, to appear before our said ...... Court of ...... at the courthouse thereof on ......, in person and submit to an examination on oath touching his indebtedness to the said principal defendant at the time of the service of this attachment, and the personal property of the said defendant in his possession at the said time, or with the consent of the court first obtained, file an answer in writing, under oath, stating whether or not he was so indebted and, if so, the amount thereof and the time of maturity, or whether he so had in his possession any personal property belonging to the principal defendant, and if so, the nature and value thereof.

And that you make return hereof on the ...... day of ......, 19.., our said ...... Court.

Witness Y. Z., Clerk of our said Court at the courthouse thereof in the County (*or,* City) and state aforesaid, this ...... day of ......, 19..

Y. Z., Clerk.

Idem.

190c. (Va.) Attachment by a Clerk for a Debt or Damages for a Breach of Contract or for a Wrong Where the Claim Exceeds $20.00.

Commonwealth of Virginia,
County (*or* City) of ......, to-wit:

To the Sheriff (*or* Sergeant) or any Constable of said County (*or* City)—Greetings:

Whereas A. A., plaintiff in this attachment, did this day in the Clerk's Office of the ...... Court of ......, file a petition duly sworn according to law for an attachment against C. D. as principal defendant and E. F. as co-defendant before me, Y. Z., clerk of our said court in the county (*or* city) of ...... state of Virginia, the said petition alleging that the principal debtor C. D. is justly and truly indebted to the plaintiff in the sum of ...... dollars which said amount was due and payable on the ...... day of ......, 19.. ; that the particulars of said demand are as follows (*here insert the particulars as shown in the petition*) and that the plaintiff is entitled to, or ought to recover of the said principal defendant at the least the said sum of ...... dollars with interest thereon from the ...... day of ...... until paid; and suggesting that at the time of the service of this attachment E. F. will be indebted to the said C. D. and will have in his possession and under his control real and personal estate belonging to the said C. D.; and alleging that C. D. the said principal defendant (*here insert grounds of attachment as in the petition*).

Therefore, we command you in the name of the Commonwealth that you attach so much of the lands, tenements, goods, chattels, moneys and effects of the said principal defendant, C. D., not exempt from execution as will be sufficient to satisfy the plaintiff's demand of ...... dollars and the costs of this attachment; and upon the execution by the plaintiff or some other person for him of the bond required by law, that you take possession of the tangible personal property directed to be attached as aforesaid; and keep such estate so attached in your possession to satisfy any judgment that may be recovered by the plaintiff in this attachment; that you summon the said principal defendant, C. D. and the said co-defendant, E. F., if they or any of them be found within your bailiwick or any county or city wherein you may have seized property under and by virtue of this writ, to appear before our said ...... Court of ...... at the courthouse thereof on ...... and answer said petition of ...... or state the grounds of their defense thereto; that you further summon the said E. F., co-defendant, to appear before our said ...... Court of ...... at the courthouse thereof on ...... in person and submit to an examination on oath touching his indebtedness to the said principal defendant at the time of the service of this attachment; and the personal property of the said defendant in his possession at the said time; or, with the consent of the court first obtained, file an answer in writing, under oath stating whether or not he was so indebted, and, if so, the amount thereof and the time of maturity, or whether he so had in his possession any personal property belonging to the principal defendant, and if so, the nature and value thereof.

And that you make return hereof on the ...... day of ......, 19.., to our said ...... Court of the ...... of ......

Witness Y. Z., clerk of our said court at the courthouse thereof in the county (*or* city) and state aforesaid, the ...... day of ......, 19..

Y. Z., Clerk.

Idem.

191. (Va.) Petition for Additional Attachment.

To Y. Z. Clerk of the ...... Court of the ...... of ......:

In the case of A. B. v. C. D. on an attachment, you are requested to issue an attachment and summons against ...... (*here insert name of person or description of property against whom attachment is to issue.*)

A. B. (*or* A. B. by Q. M., attorney *or*
agent *as the case may be*).

Text page 331; Va. Code § 6388.

192a. (Va.) Return on Attachment Served on Principal Defendant Where No Property Was Taken into the Possession of the Officer.

Executed on the ...... day of ......, 19.., at ...... o'clock on the following personal property of the principal defendant, C. D., in his possession (*here describe each parcel of property levied on*) by delivering a true copy of the within attachment in writing to C. D. in person (*or state other manner of service*); and no attachment bond being given by the plaintiff or anyone for him, I did not take any of the aforesaid property into my possession.

E. J., Sheriff (*or* Sergeant) of
...... of ......

Text page 830; Va. Code, §§ 6386, 6387, 6390, 6391.

192b. (Va.) Return on Attachment Served on Garnishee Where No Property Was Taken into the Possession of the Officer.

Executed on the ...... day of ......, 19.., at .... o'clock on the following personal property belonging to the principal defendant, C. D., in the possession of the co-defendant, E. F., (*here describe each parcel of property levied on*), and on the following debts then owed to the said C. D., by the said E. F., (*here describe the debts*) by delivering a true copy of the within attachment in writing to E. F. in person (*or state other manner of service*); and no attachment bond being given by the plaintiff or any one for him, I did not take any of the aforesaid property into my possession.

E. J., Sheriff (*or,* Sergeant) of
...... of ......

Idem.

192c. (Va.) Return on Attachment Levied on Real Estate.

Levied on the following real estate of the defendant C. D., (*or* defendants) to-wit: (*here describe the real estate*) this the .... day of ......, 19.., at ...... o'clock.

E. J., Sheriff (*or other officer*).

Idem.

193. (Va.) Indorsed Certificate that Bond Has Been Given in Attachment.

To the Sheriff (*or* Sergeant) or any Constable of ......, Greeting:

I certify that A. B., (*or* ...... for) the plaintiff in the within attachment, has given bond with surety approved by me in a penalty double the amount of the claim sworn to and sued for by him, and upon which said attachment issued, with condition to pay all costs and damages which may be awarded against him, or sustained by any person by reason of his suing out the said attachment.

Given under my hand this ...... day of ......, 19..

Y. Z., Clerk.

Text page 837; Va. Code, § 6384.

194. (Va.) Affidavit of Substantial Defense by Defendant.

I, C. D., principal defendant in an attachment secured by A. B., in the ...... Court of the ...... of ......, Virginia, on the ...... day of ......, 19.., and returnable on ......, to the ...... Court of ......, do hereby swear that I have a substantial defense to the merits of the plaintiff's claim.

Given under my hand this ...... day of ......, 19..

C. D.

State of Virginia,
...... of ......, to-wit:

This day personally appeared before me, X. Y., a ...... in and for the ...... aforesaid in the State of Virginia, C. D., whose name is signed to the foregoing affidavit who made oath that the matters and things stated therein are true.

Given under my hand this ...... day of ......, 19..

....
(*Official capacity*).

Text page 838; Va. Code § 6385.

195. (Va.) Answer of a Co-Defendant to a Petition for an Attachment.

In the ...... Court of the ...... of ......, Virginia:

A. B.
v. } Answer.
C. D. and E. F.

The answer under oath of E. F. to an attachment issued against him and C. D.

This respondent, in answer to said attachment, states that at the time said attachment was served upon him, he was indebted (*here state amount and character of indebtedness, if any, and if no indebtedness so state*).

This respondent further states that he had in his possession at the said time the following property of the said A. B. (*here describe nature and value of the property, if any*).

And now, having answered fully to said attachment, this respondent asks leave to pay the said money into court and turn said property over to ...... and be hence discharged with his costs in this behalf expended.

E. F.

State of Virginia,
...... of ......, to-wit:

I, ..., a ......, for the ...... aforesaid, do certify that E. F., has personally appeared before me in my state and ...... aforesaid, and made oath that the facts stated in the foregoing answer are true.

Given under my hand this .... day of ......, 19..

....
(Official Character.)

Text page 835; Va. Code, §§ 6389, 6403.

196. (Va.) Indemnifying Bond by Plaintiff in Attachment.

A. B.
v. } Indemnifying Bond.
C. D.

Know all men by these presents, that we, A. B. and G. G., are held and firmly bound unto H. H., Sheriff (*or,* sergeant) of the county (*or,* city) of ...... in the State of Virginia, in the just and full sum of ...... dollars, to be paid to the said H. H., to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemptions as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such, that whereas the said A. B., did, on the .... day of ......, 19.., upon petition made in due form of law, obtain from Y. Z., clerk of the court an attachment against the estate of one C. D. for the sum of ...... dollars, with interest thereon from the .... day of ......, 19.., until paid, which said attachment is directed to the sheriff (*or,* sergeant) or any constable of the said county (*or,* city) of ...... and returnable before the said court on the .... day of ......, 19.., (*or,* on the .... day of the ...... term, 19..); and whereas the said attachment came to the hands of the said H. H., Sheriff (*or,* Sergeant) of said county (*or* city) of ......, to be served and levied on the following property, to-wit: (*here describe the property*) of the value of ...... dollars, and whereas doubt has arisen as to the liability of the said property to the said attachment, and the said H. H. has notified the plaintiff that an indemnifying bond is required in the case:

Now, therefore, if the said A. B. and G. G. or either of them, shall indemnify the said H. H., sheriff (*or,* sergeant) as aforesaid, against all damages which he may sustain in consequence of the seizure or sale of the property aforesaid; and shall pay to any claimant of such property all damages which he may sustain in consequence of such seizure and sale; and shall also warrant and defend to any purchaser thereof, such estate or interest therein as may be sold under said attachment, then the above bond to be void, otherwise to remain in full force and virtue.

A. A. (Seal)
G. G. (Seal)

(*Append Clerk's Certificate as in Form No. 197.*)

Va. Code 6154; Barnes' W. Va. Code, Ch. 107, §§ 2, 3.

197. (Va.) Bond by Plaintiff.

A. B.
v.
C. D.
} Bond by Plaintiff.

Know all men by these presents, that we, A. B. and G. G., are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of ...... dollars, to be paid to the Commonwealth of Virginia, to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemptions as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

(1) *Condition where specified personal property is to be attached.* The condition of the above obligation is such, that whereas the said A. B., did, on the ...... day of ......, 19.., upon a petition made in due form of law in the clerk's office of the ...... Court of the ...... of ......, before Y. Z., clerk thereof, obtain from the said Y. Z. an attachment against (*here

describe the property) detained by one C. D. which said ...... is of the value of ...... dollars, and against the estate of the said C. D. for the amount of ...... dollars for the detention of the said ......, being the amount of the claim sworn to in the aforesaid petition.

(2) *Condition where attachment is for a debt or damages for a breach of contract or for a wrong.* The condition of the above obligation is such that whereas the said A. B. did, this day (*or* on the .... day of ......, 19..) upon a petition made in due form of law in the clerk's office of the ...... Court of the ...... of ......, before Y. Z., clerk thereof, obtain from the said Y. Z. an attachment against the estate of one C. D. for the sum of ...... dollars, with interest thereon from the .... day of ......, 19.., until paid, being the amount of the claim sworn to in the aforesaid petition, said attachment being for the recovery of a debt (*or,* for the recovery of damages for breach of contract, *or* for the recovery of damages for a wrong).

(3) *Condition where attachment is for a debt not due.* The condition of the above obligation is such, that whereas the said A. B., did, this day (*or,* on the .... day of ......, 19..), upon a petition made in due form of law in the clerk's office of the ...... Court of the county (*or* city) of ...... before Y. Z., clerk of said court, obtain from the said Y. Z., an attachment against the estate of one C. D. for the sum of $...... being the amount of the claim sworn to in the aforesaid petition, said attachment being for the recovery of a debt not yet due and payable, but to become due and payable on the .... day of ......, 19..

Which said attachment is directed to the sheriff (*or* sergeant *or* constable) of the said county (*or* city) of ...... and returnable before the said court on the .... day of ......, 19.., (*or,* the .... day of the ...... Term, 19..).

Now, therefore, if the said A. B. shall pay all costs and damages which may be awarded against him, or sustained by any person by reason of his suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and virtue.

A. B. (SEAL)
G. G. (SEAL)

State of Virginia,
...... of ......, to-wit:

This day personally appeared before me, a ...... in and for the ......aforesaid, A. B. and G. G. and acknowledged the signature above written to be their own act and deed, the surety therein having first justified on oath that his estate, after the payment of all just debts, and those for which he is bound as security for others and expects to have to pay, is worth the sum of ...... dollars, over and above all exemptions allowed by law.

Given under my hand this .... day of ......, 19..

....
Notary Public (*or other officer.*)

Text page 837; Va. Code, § 6384; Barnes' W. Va. Code, Ch. 106, § 6.

198. (Va.) Bond by Plaintiff to Attachment When Defendant Makes Affidavit of Substantial Defense.

A. B.
v. } Bond by Plaintiff.
C. D.

Know all men by these presents, that we, A. B. and G. G. are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of ...... dollars, to be paid to the Commonwealth of Virginia, to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemptions as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such that whereas the said A. B. did on the .... day of ......, 19.., upon a petition made in due form of law in the clerk's office of the ...... Court of the ...... of ......, before Y. S., clerk thereof, obtain from the said Y. Z. an attachment against (*here describe the property attached*) and against the estate of the said C. D. for the amount of ...... dollars for the detention of the said ......, being the amount of the claim sworn to in the aforesaid petition, which said attachment is directed to the sheriff (*or*, sergeant, *or* any constable) of the said county (*or* city) of ......, and returnable before the said court on the .... day of ......, 19..; and whereas the said C. D. did file in the clerk's office of the said court, before Y. Z., clerk thereof, an affidavit that he has a substantial defense to the merits of the aforesaid claim on the .... day of ......, 19.., and whereas the said Y. Z. forthwith notified the said A. B. of the filing of said affidavit.

Now, therefore, if the said A. B. shall prosecute the said attachment with diligence, and the said A. B. and G. G. shall pay all costs and damages which may be awarded against the said A. B., or sustained by the said C. D. or any other person by reason of A. B.'s suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and virtue.

A. A. (SEAL)
G. G. (SEAL)

(*Append Clerk's Certificate as in Form No. 197.*)

Text page 838; Va. Code, § 6385.

199. (Va.) Forthcoming Bond to Release, or Restore Property Seized under Attachment.

A. B.
v.
C. D. and E. F.
} Forthcoming Bond.

Know all men by these presents that we, E. F. and G. G. are held and firmly bound unto A. B. in the just and full sum of ...... dollars to be paid to the said A. B. to which payment we bind ourselves and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such, that whereas the said A. B. did, on the .... day of ......, 19.., upon petition made in due form of law, obtain from Y. Z., clerk of the ...... court of the ...... of ......, an attachment against the estate of the said C. D. for the sum of ...... dollars, with interest thereon from the ...... day of ......, 19.., until paid, which said attachment is directed to the sheriff (*or,* sergeant) or any constable of the said county (*or,* city) of ......, and returnable before the said court on the .... day of ......, 19.., (*or,* the

.... day of the ...... Term, 19..); and whereas the said A. B. did, on the .... day of ......, 19.., give bond with surety, approved by the said clerk, in a penalty double the amount of the claim sworn to and sued for, with condition to pay all costs and damages which may be awarded against him, or sustained by any person by reason of his suing out the attachment; and whereas, the said attachment came to the hands of H. H., sheriff (*or,* sergeant) of said county (*or,* city) to be served and levied, who, by virtue thereof, levied on, and seized the following property found in the possession of the said E. F., to-wit: (*here describe the property*); and the said E. F., desiring to retain in (*or,* have returned to) his possession the property so levied on, and seized, hath tendered the above-bound G. G., as his surety in such bond, for the forthcoming thereof, as the law in such cases requires:

Now, therefore, if the said E. F. shall have the said property so levied on and seized forthcoming at such time and place as the court may require, then the above obligation to be void, otherwise to remain in full force and virtue.

E. F. (SEAL)
G. G. (SEAL)

(*Append Clerk's Certificate as in Form No. 197.*)

Text page 847; Va. Code, § 6394.

200. (Va.) Bond for Defendant in Attachment with Condition to Perform the Judgment of the Court.

A. B.
v. } Replevy Bond.
C. D.

Know all men by these presents, that we, C. D. and G. G., are held and firmly bound unto A. B. in the just and full sum of ...... dollars, to be paid to the said A. B., to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such, that whereas the said A. B. did, on the .... day of ......, 19.., upon a petition made in due form of law, obtain from Y. Z., clerk of the ...... court of the ...... of ......, an attachment against the estate of said C. D. for the sum of ...... dollars, with interest thereon from the .... day of ......, 19.., until paid which said attachment is directed to the sheriff (*or,* sergeant *or* any constable) of the said county (*or,* city) of ...... and returnable before the said court on the .... day of ......, 19.., (*or,* to the .... day of the ...... Term, 19..) and whereas the said A. B. did, on the .... day of ...... 19.., give bond with surety, approved by the said clerk, in a penalty double the amount of the claim sworn to and sued for with condition to pay all costs and damages which may be awarded against him, or sustained by any person by reason of his suing out the attachment; and whereas the said attachment came to the hands of H. H., sheriff of said county (*or* city), to be served and levied, who, by virtue thereof, levied on, and seized, the following property found in the possession of the said C. D., to-wit: (*here describe the property*); and the said C. D. desiring to have the whole estate so attached and seized, released by giving bond to perform the judgment of the said court, hath tendered the above bound G. G. as his surety in such bond as the law in such case requires:

Now, therefore, if the said C. D., the defendant in said action, shall perform the judgment of the said court, then the above obligation to be void, otherwise to remain in full force and virtue.

C. D. (Seal.)
G. G. (Seal.)

(*Append Clerk's Certificate as in Form No. 197.*)

Idem.

201. (Va.) Payment and Forthcoming Bond by Garnishee on Attachment after His Liability Is Ascertained.

A. B.
v. } Payment and Forthcoming Bond by Garnishee.
C. D. and E. F.

Know all men by these presents, that we, E. F. and G. G., are held and firmly bound unto A. B. in the just and full sum of ...... dollars, to be paid to the said A. B. to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such, that whereas the said A. A. did on the .... day of ......, 19.., upon a petition made in due form of law, obtain from Y. Z., clerk of the ...... Court of the ...... of ......, an attachment against the estate of one C. D. for the sum of ...... dollars, with interest thereon from the .... day of ......, 19.., until paid, which said attachment is directed to the sheriff (*or*, sergeant, *or* any constable) of the said county (*or*, city) of ...... and returnable before the said court on the .... day of ......, 19.., (*or*, on the .... day of the ...... Term, 19..); and whereas the said attachment came to the hands of H. H., sheriff (*or* sergeant) of said county (*or* city) to be served and levied, who, by virtue thereof, levied the said attachment on (*here describe the property*) as the property of the said C. D. in the possession of the said E. F. and also on a debt of ...... dollars, alleged to be owing to the said C. D. from the said E. F. by his promissory note to the said C. D.; and whereas the above bound E. F. has been summoned as a garnishee in the attachment aforesaid, and has acknowledged himself to be indebted to the said C. D. in the said sum of ...... dollars, due to the said C. D. from the said E. F., by his promissory note as aforesaid, and also to be in possession of the said (*here describe the property*) which he admits to be the property of the said C. D.; and whereas it has been ordered by the said court that the said E. F. may give bond, with sufficient surety in the penalty of ...... dollars, the sum in the above obligation named, payable to the said A. A., with condition to pay the amount owing by the said E. F. as aforesaid, and to have the effects aforesaid forthcoming at such time and place as the said court may thereafter require; and whereas the said E. F. has tendered the said G. G. as his surety in such bond as the law requires;

Now, therefore, if the said E. F. shall pay to the said A. A. the said sum of ...... dollars, and shall have the said (*property*) forthcoming at such time and place as the said court may hereafter require, then the above obligation to be void, otherwise to remain in full force and virtue.

E. F. (SEAL)
G. G. (SEAL)

(*Append Clerk's Certificate as in Form No. 197.*)

Idem.

202. (Va.) Bond by Plaintiff in Attachment Where Plaintiff Has Obtained Judgment but the Defendant Did Not Appear.

A. B. }
v. } Bond by Plaintiff.
C. D. }

Know all men by these presents, that we, A. B. and G. G., are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of (*in such penalty as the court shall approve*) to be paid to the Commonwealth of Virginia, to which payment we bind ourselves, and our heirs, executors, and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such, that whereas the said A. B. did on the .... day of ......, 19.., upon a petition made in due form of law in the county (*or,* city) of ...... and State of Virginia, before Y. Z., clerk of the ...... Court of the ...... of ......, obtain from the said Y. Z. an attachment against the estate of one C. D. for the sum of ...... dollars, being the amount of the claim sworn to in the aforesaid petition, which said attachment is directed to the sheriff (*or,* sergeant, *or* any constable) of the county (*or* city) of ...... returnable before the ...... court of the ...... of ......, on the .... day of ......, 19.., (*or,* on the .... day of the ...... Term, 19..); and whereas the said attachment came to the hands of H. H., sheriff (*or,* sergeant) of the said county (*or,* city) to be served and levied, who, by virtue thereof, levied the said attachment on the following property, to-wit: (*here describe the property*) of the value of ...... dollars; and whereas judgment was rendered for the said A. B. on the .... day of ...., 19.., and an order for the sale of the attached property was given without the said C. D. appearing (*or,* without the said C. D. having been served with a copy of said attachment ten days before said judgment);

Now, therefore, if the said A. B. shall perform such future order as may be made upon the appearance of the said C. D. and his making defense, then the above obligation to be void, otherwise to remain in full force and virtue.

A. B. (SEAL)
G. G. (SEAL)

(*Append Clerk's Certificate as in Form No. 197.*)

Va. Code, § 6406.

203. (Va.) Notice of Motion to Quash Attachment.

To A. B.

You will take notice that I shall, on the .... day of ......, 19.., at ten o'clock, A. M., move the Judge of the ...... Court of the ...... of ......, in whose court you have instituted an action and sued out an attachment against me, to quash and dismiss the said attachment, on the ground that it is invalid on its face (*or,* was issued on false suggestions, *or* without sufficient cause).

Given under my hand this .... day of ......, 19..

C. D.

Text page 852; Va. Code, § 6403.

204a. (Va.) Order Quashing Attachment Because Issued without Sufficient Cause, or on False Suggestion.

In the ...... Court of the ...... of ......, Virginia:

A. B.
v. } Order Quashing Attachment.
C. D.

This day came as well the said A. B. as the said C. D. by their attorneys, and the said C. D., insisting that the attachment sued out in this case was issued without sufficient cause (*or,* on false suggestions), after reasonable notice thereof to the said A. B., moved the court to quash the said attachment. Whereupon, the parties being fully heard, it is considered by the court that the said attachment was sued out without sufficient cause (*or,* on false suggestion). And it is ordered that the said attachment be quashed and that the said A. B. pay to the said C. D. his costs by him in this behalf expended.

Idem.

204b. (Va.) Order Quashing Attachment Because the Same Is Invalid on Its Face.

In the ...... Court of the ...... of ......, Virginia:

A. B.
v. } Order Quashing Attachment.
C. D.

This day came as well the said A. B. as the said C. D. by their attorneys, and the said C. D. insisting that the attachment sued out in this case is invalid on its face, after reasonable notice thereof to the said A. B. moved to quash the said attachment. Whereupon, the parties being fully heard, and the attachment aforesaid being seen and inspected, it is considered that the said attachment be quashed, and that the said A. B. pay to the said C. D. his costs by him in this behalf expended.

Idem.

205. (Va.) Affidavit for Writ of Capias ad Respondendum, Where the Defendant Is About to Quit the State.

A. B.
v. } Affidavit for *Capias ad Respondendum.*
C. D.

Commonwealth of Virginia,
...... of ......, to-wit:

This day A. B. (*or* B. B., agent *or* attorney for A. B.) plaintiff in a suit in equity now pending in the ...... Court of the ...... of ......, personally appeared in and before the said court (*or,* personally appeared before me, Y. Z., judge of said court in vacation, *or,* personally appeared before me, S. T., clerk of said court) and made oath that the said plaintiff has a suit against the defendant, C. D.; that the amount of his said claim is ...... dollars; that the said claim is just; that the justice of the said claim is shown from the fact that the said defendant has, to-wit: (*here state the fact relied on*); and that there is probable cause for believing that the defendant is about to quit this state, unless he be forthwith apprehended.

A. B.
(*or* B. B., agent *or* attorney for A. B.)

Subscribed and sworn to before me this .... day of ......, 19... In testimony whereof I have hereunto set my hand the day, month and year aforesaid.

Y. Z., Judge.

Va. Code, §§ 6419-6425.

206. (Va.) Bond by Plaintiff for Writ of Capias ad Respondendum, Where the Defendant in an Action or Suit Is about to Quit the State.

A. B.
v. } Bond by Plaintiff.
C. D.

Know all men by these presents that we, A. B. and G. G., are held and firmly bound unto C. D. in the just and full sum of ...... dollars, to be paid to the said C. D., to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this .... day of ......, 19..

The condition of the above obligation is such, that whereas the said A. B. (*or* B. B., agent *or* attorney for A. B.), plaintiff in a suit in equity now pending in the ...... Court of the ...... of .....:, has appeared in person before the said court (*or*, Y. Z., judge of the said court, in vacation), and made affidavit that the plaintiff has a suit against the defendant, C. D.; that the amount of his said claim is ...... dollars; that the said claim is just; that the justice of the said claim is shown from the fact that the said defendant has, to-wit: (*here state the fact relied on*); and that there is probable cause for believing that the defendant is about to quit this state, unless he be forthwith apprehended; and whereas, the said court (*or* judge) has ordered and directed that the said defendant shall be held to bail in the sum of ...... dollars; and whereas the said plaintiff, desiring that a writ of *capias ad respondendum* be sued out of the clerk's office of the said court, in said suit, hath tendered the above-bound G. G. as his surety in such bond the law in such case requires;

Now, therefore, if the said A. B. shall pay all costs and damages which may be awarded against him, or sustained by the defendant, C. D., by reason of the arrest of the said defendant under said *capias,* then the above obligation to be void, otherwise to remain in full force and virtue.

A. R. (Seal).
G. G. (Seal).

(*Append Certificate of Clerk as in Form No. 197.*)

Idem.

207. (Va.) Writ of Capias ad Respondendum Where the Defendant in an Action, or Suit, Is about to Quit the State.

Commonwealth of Virginia,
County (*or* City) of ......, to-wit:

To the Sheriff (*or* Sergeant) of said ......, Greeting:

We command you that you take C. D., if he be found within your bailiwick, and him safely keep, so that you have his body before the judge of our ...... Court of the ...... of ......, at the courthouse thereof, on the first day of the next term (*or,* at the clerk's office of our ...... Court of ...... at the rules to be held for our said court on the ...... Monday in ...... next) to answer A. B. in a certain suit in chancery; and have then and there this writ.

Witness Y. Z., clerk of our said court, at the courthouse thereof, in the county and state aforesaid, the ...... day of ......, 19...., and in the ...... year of the commonwealth.

Y. Z., Clerk.

Idem.

208. (Va.) Bail Bond by a Defendant in an Action or Suit Who Has Been Arrested under a Writ of Capias ad Respondendum.

A. B.
v. } Bail Bond.
C. D.

Know all men by these presents, that we, C. D. and G. G., are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of ...... dollars, to be paid to the Commonwealth of Virginia, to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this ...... day of ......, 19.....

The condition of the above obligation is such, that whereas the above-bound C. D. has been arrested by E. F., sheriff (*or,* sergeant) of ...... county (*or,* city) by virtue of a writ of *capias ad respondendum,* sued out of the clerk's office of the ...... court of the ...... of ...... in the above styled suit, now pending in the said court, wherein A. A. is plaintiff and C. D. is defendant; and whereas the said C. D. desiring to be released from the arrest so made, hath tendered the above bound G. G. as his surety in such bond as the law in such case requires;

Now, therefore, in case there shall in the suit be a decree or order on which a writ of *fieri facias* may issue, and within four months after such decree or order, interrogatories be filed, under Va. Code 1924, Sec. 6503, with a commissioner of the court wherein such decree or order is, if the said defendant will, at the time the commissioner issues a summons to answer such interrogatories, be in the county in which such commissioner may reside, and will, within the time prescribed in such summons, file proper answers, upon oath, to such interrogatories, and make such conveyance and delivery as is required by chapter 272 of said code, or in case of failure to file such answers and make such conveyance and delivery, if the said defendant will perform and satisfy the said decree or order, then the above obligation to be void, otherwise to remain in full force and virtue.

C. D. (Seal).
G. G. (Seal).

(*Append Certificate of Clerk as in Form No. 197.*)

Idem.

209a. (Va.) Judgment on Attachment against Petitioner, Claiming Property Attached.

A. B.
v.
C. D. and E. F. } Judgment on Attachment.

This day came the plaintiff by his attorney, and M. M. by his attorney, who, with leave of court, filed his petition herein, disputing the validity of the plaintiff's attachment, and stating a claim to the property attached by the sheriff (*or,* sergeant) of the county (*or* city) by virtue of the attachment issued in this case, and the court requiring of the said M. M. security for costs, the said M. M. with G. G. as surety, executed a bond in the penalty of ...... dollars, conditioned to pay all costs which shall be awarded against him, the said petitioner, by reason of his filing his said petition, and the trial of the claim therein asserted; and, thereupon the said M. M. demanding a jury, came a jury to-wit: (*here give the names of jurors*) who, being sworn to well and truly try the issue joined, and a true verdict give according to the evidence rendered their verdict as follows: "We, the jury, upon the issue joined find that the ...... within mentioned is not the property of M. M." Therefore, it is considered by the court that the plaintiff recover against the said M. M. his costs by him herein expended.

Text page 859; Va. Code, § 6398.

209b. (Va.) Judgment on Attachment and Order of Sale of Attached Effects When Defendant Has Been Personally Served with Process But Has Not Appeared.

In the ...... Court of the ...... of ......, Virginia:

A. B.
v. } Judgment on Attachment.
C. D.

This day came the plaintiff by his attorney and the defendant upon whom the attachment has been served, was solemnly called, but came not. Whereupon it being proven that the said C. D. is indebted to the plaintiff in the sum of ...... dollars mentioned in the attachment sued out in this cause, with interest thereon from the ...... day of ......, 19...., it is therefore considered by the court that the plaintiff recover against the said C. D. the said sum of ...... dollars with interest thereon at the rate of six per cent. per annum from the said ...... day of ......, 19.., until paid, and his costs by him in this behalf expended.

(*) And it appearing that the attachment herein issued was levied on the following personal property of the defendant D. C. to-wit: (*here describe the same*) to satisfy the plaintiff's said debt and claim, it is ordered that the sheriff (*or*, sergeant of the county (*or* city) of ......, do sell the said personal property or so much thereof as may be necessary to satisfy this judgment and costs, as the law directs, and out of the money arising from such sale the said sheriff (*or* sergeant) shall satisfy this judgment to the plaintiff and restore the overplus, if any, to the defendant, and return an account of such sale to the next term of this court.

If the sale is of real estate insert the following: And it appearing that the attachment herein was levied on the following real estate of the defendant, C. D., to-wit: (*here describe the real estate*) that the said property is still under the levy of the said attachment; and that the rents and profits from said real estate will not in five years pay the judgment rendered herein, it is ordered that M. M. who is hereby appointed a special commissioner of this court for the purpose, shall sell the real estate (*here insert place of sale, advertisement and terms*) and make report of his action hereunder to the next term of this court. But before said special commissioner shall make such sale he shall execute a bond with approved security before the clerk of this court in the penalty of ...... dollars conditioned as the law directs.

Text pages 858, 860; Va. Code, §§ 6398, 6405.

209c. (Va.) Judgment on Attachment after Jury Trial and Order of Sale of Attached Effects.

A. B.
v. } Judgment on Attachment.
C. D.

This day came the parties by their attorneys, and thereupon came a jury, to-wit: (*here give names of jurors*) who, being sworn to well and truly try the issue joined; and a true verdict give according to the evidence, rendered their verdict as follows (*here insert verdict*).

Therefore it is considered by the court that the plaintiff recover against the defendant the sum of $...... with interest thereon from the ...... day of ......, 19...., until paid, and his costs by him in this behalf expended.

(Here follow Form No. 209b from the *.)

Idem.

209d. (Va.) Judgment on Attachment and Order of Sale Where Service Is by Publication.

A. B.
v. } Judgment on Attachment.
C. D.

This ...... day of ......, 19...., came the plaintiff by his attorney, and it appearing to the court that the defendant has been duly proceeded against by order of publication, published, posted and mailed as the law directs, and that more than ten days have elapsed since the completion of said publication and the defendant has not appeared; that the defendant is indebted to the said plaintiff in the sum of ...... dollars, with interest thereon from the ...... day of ......, 19....; that the grounds of attachment alleged in the petition therefor have been duly proven; but this being a proceeding by order of publication and attachment of the property of the said defendant found in the ...... of ......, without any personal service on the said defendant, and the said defendant not having entered his appearance to this action, the court does not enter any personal judgment against the said defendant; but does find and adjudge, that the property of the said defendant levied on by virtue of said attachment is liable to the payment of ...... dollars with interest thereon from the .... day of ......, 19...., until paid, and the costs of this suit and attachment hereon;

*Here follow Form No. 209b from the * and add*: It is further ordered that before said sale shall be made, the plaintiff, or someone for him, shall give bond with sufficient security before the Clerk of this court in the penalty of ...... dollars, conditioned that the plaintiff will perform such future orders as may be made by the court in this suit, should the defendant hereafter appear and make defense herein within the time prescribed by law).

XXXIB. Forms in Attachment Proceedings in West Virginia

(*See also Va. Forms.*)

210. (W. Va.) Affidavit for Order of Attachment in Aid of an Action at Law, or Suit in Equity for the Recovery of a Claim, or a Debt Arising out of Contract, or Damages for a Wrong.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } Affidavit for Order of Attachment.
C. D.

State of West Virginia, ... County to-wit:

This day, and when an action at law (*or* suit in equity) is about to be instituted (*or*, and after an action at law *or* suit in equity is instituted, and before judgment thereon) in our ......

Court of ...... County against C. D. for the recovery of a claim (*or* debt) arising out of contract (*or* to recover damages for a wrong), A. B., plaintiff in said action (*or* suit), personally appeared before me, E. F., clerk of our said court in the clerk's office thereof, in the state and county aforesaid, and made oath that the nature of his claim against the said C. D. is as follows: (*here state its nature*); that the sum of five hundred dollars is the amount, at the least, which the affiant believes the plaintiff is justly entitled to recover in the said action (*or* suit); and also that the affiant believes that the defendant (*or* one of the defendants)

(1) Is a foreign corporation (*or* is a non-resident of this state); and,

(2) Has left the state with intent to defraud his creditors; and,

(3) Is about to leave the state with intent to defraud his creditors; and,

(4) So conceals himself that a summons cannot be served upon him; and

(5) Is removing his property (*and* or the proceeds of the sale of his property, or a material part of such property, or proceeds) out of this state, so that process of execution on a judgment (*or* decree) in such action (*or* suit), when it is obtained, will be unavailing; and,

(6) Is about to remove his property (*and,* or the proceeds of the sale of his property, or a material part of such property, or proceeds) out of this state, so that process of execution on a judgment (*or* decree) in such action (*or* suit), when it is obtained will be unavailing; and,

(7) Is converting his property (*and* or a material part thereof) into money, (*and* or securities) with intent to defraud his creditors; and,

(8) Is about to convert his property (*and* or a material part thereof) into money (*and* or securities), with intent to defraud his creditors; and,

(9) Has assigned his property (*and* or a material part thereof), with intent to defraud his creditors; and,

(10) Is about to assign his property (*and,* or a material part thereof), with intent to defraud his creditors; and,

(11) Has disposed of his property (*and* or a material part thereof), with intent to defraud his creditors; and

(12) Is about to dispose of his property (*and* or a material part thereof) with intent to defraud his creditors; and,

(13) Has property (*and* or rights in action), which he conceals; and,

(14) Fraudulently contracted the debt (*or* incurred the liability) for which the action (*or* suit) is about to be (*or* is) brought; and (*unless the attachment is sued out solely upon the first of the above grounds*) that the material facts relied upon by the affiant to show the existence of the grounds upon which his application for attachment is based are as follows: (*here state them*).

A. B., Plaintiff.

Taken, sworn to, and subscribed before me this ...... day of ......, 19..... In testimony whereof, I have hereunto set my hand the day, month and year aforesaid.

E. F., Clerk.

Text pages 818, 832; Barnes' W. Va. Code, Ch. 106, § 1.

211. (W. Va.) Bill in an Attachment Suit.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery: Bill.
C. D.

To the Hon. ......, Judge of the said Court:

Your orator, A. B., respectfully represents:

1. That he is a merchant engaged in the furniture business at ......, West Virginia;

2. That on the ...... day of ......, 19...., he sold to C. D., the defendant, a quantity of furniture of the value of

$...... of which the said defendant paid your orator $......, leaving a balance due your orator of $......, with interest from the ...... day of ......, 19...., which sum your orator has often requested the said C. D. to pay and is the amount at the least which the defendant should pay.

3. That the said defendant (*here state one or more grounds of attachment as in Form No. 210 setting forth material facts relied on to show the existence of the grounds alleged or follow the affidavit if a separate one has been made*).

If an attachment has been issued and levied, insert 4. That your orator has caused an attachment to be issued from the Clerk's Office of this court and has had the same levied upon *here state upon what the attachment was levied.* The said attachment with the officer's return thereon is herewith filed marked "Attachment" and asked to be treated as a part of this bill.

5. (*If a lis pendens has been filed so state.*)

6. Your orator is advised that he is entitled to come into this court of equity and enforce the payment of the debt by a sale of the property attached.

7. Wherefore your orator prays that C. D. may be made a party defendant to this bill and be required to answer it; that an attachment may issue against the estate, real and personal of the said C. D. (*omit this if attachment has been issued*); that a decree may be entered herein, fixing the amount of his debt against the defendant, C. D.; that the personal and real property herein attached may be sold in satisfaction of said debt and that your orator may have such other, further and general relief as to equity may seem meet, and as in duty bound he will ever pray, etc.

A. B.,
By Counsel.

Q. M., Counsel.

Append affidavit as in Form No. 32 if no independent affidavit has been filed.

Text page 832; Barnes' W. Va. Code, Chapter 106, § 1.

212a. (W. Va.) Order of Attachment in Aid of an Action at Law or Suit in Equity for the Recovery of a Claim or a Debt Arising out of Contract or Damages for a Wrong, Where Bond Is Not Given.

In the Circuit Court of ...... County, West Virginia:

A. B., Plaintiff
v.
C. D., Defendant. } In Chancery. Order of Attachment.

The plaintiff in this case, having filed his affidavit as required by law, the sheriff of the county of ......, or a constable of any district therein, to whom this order may come, is required. in the name of the state of West Virginia, to attach the estate of the defendant, C. D., sufficient to pay the sum of ...... dollars (*the amount the affiant states the plaintiff is justly entitled to recover*) and the costs of this suit, and make return of his proceedings under his order to the next term of the Circuit Court of ......, (*or* at the rules to be held for the Circuit Court of ......, on the ...... day of ......, *naming in either case the court in which the action is brought*).

Witness X. Y., clerk of said court, this ...... day of ......, 19.....

X. Y., Clerk.

Text page 835; Barnes' W. Va. Code, Ch. 106, §§ 1-2.

212b. (W. Va.) Order of Attachment in Aid of an Action at Law or Suit in Equity for the Recovery of a Claim or a Debt Arising out of Contract or Damages for a Wrong, Where Bond Is Given.

In the Circuit Court of ...... County, West Virginia:

A. B., Plaintiff
v.
C. D., Defendant. } In Chancery. Order of Attachment.

The plaintiff in this case, having filed the necessary affidavit (*if security has been given, add,* and bond), the sheriff of the county of ......, or a constable of any district therein to whom this order shall come, is hereby required, in the name of the state of West Virginia, to attach and take into his possession the estate of the defendant, C. D., sufficient to pay the sum of ...... dollars (*the amount affiant states the plaintiff is justly entitled to recover*) and the costs of the suit, and make return of his proceedings under this order to the next term of the Circuit Court of ......, (*or* at the rules to be held for the Circuit Court of ......, on the ...... day of ......, (*naming in either case the court in which the action is brought*).

Witness X. Y., Clerk of said court, this ...... day of ......, 19.....

X. Y., Clerk.

Idem.

213. (W. Va.) Indorsement on Order of Attachment Designating Person Indebted.

To the Clerk of the Circuit Court of ...... County:

I hereby designate F. F., as being indebted to and as having in his possession effects of the defendant C. D. (*or* one of the defendants, namely E. E.).

A. B., Plaintiff.

Idem.

214. (W. Va.) Indorsement on Order of Attachment Requiring Party Designated to Appear.

To the Sheriff of ......, Greeting:

Serve the within order of attachment on F. F., who has been designated by A. B., plaintiff, in this action (*or* suit) as being indebted to and having in his possession the effects of the defendant, C. D. (*or,* one of the defendants, namely, E. F.) and who is required to appear at the next term of our Circuit Court of ...... County and disclose on oath in what sum he is indebted to the defendant, and what effects of the defendant he has in his hands.

X. Y., Clerk.

Text page 836; Barnes' W. Va. Code, Ch. 106, § 5.

215a. (W. Va.) Return on Attachment after Levy.

Received the within order of attachment on the ...... day of ......, 19...., at ...... o'clock, ...M.

G. G., Sheriff of ...... County.

Executed the within order of attachment on the ...... day of ......, 19...., at ...... o'clock, ...M., by levying the same upon the personal property of the within-named ......, as set forth and described in the accompanying list hereto annexed and hereby returned with the said order of attachment. And I also took the said property into my possession at the time of making the levy aforesaid.

......, Sheriff.

Text page 842; Barnes' W. Va. Code, Ch. 106, §§ 4, 7.

215b. (W. Va.) Return on Attachment Served on Person Indebted to or Having in His Possession Effects of the Defendant.

Executed on the ...... day of ......, 19...., within the county of ......, by delivering a true copy of the within order of attachment and indorsement thereon, in writing to E. F., in person, who is designated by the plaintiff in the said endorsement as being indebted to and having in his possession the effects of the defendant, C. D.

E. J., Sheriff.

Idem.

216. (W. Va.) Bond by Plaintiff for Order of Attachment in Aid of an Action at Law or Suit in Equity for the Recovery of a Claim or a Debt Arising out of Contract or Damages for a Wrong.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Bond by Plaintiff.
C. D.

Know all men by these presents, that we, A. B. and G. G., are held and firmly bound unto the state of West Virginia in the just and full sum of ...... dollars, to be paid to the state of West Virginia, to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this ...... day of ......, 19....

The condition of the above obligation is such, that whereas the said A. B., plaintiff in an action at law (*or* suit in equity) against C. D., for the recovery of a claim (*or* debt) arising out of contract (*or* to recover damages for a wrong) pending in the ...... Court of ...... county, did, this day (or on the ...... day of ......, 19....), on filing with X. Y., clerk of the said court, an affidavit as required by law, obtain from the said X. Y. an order of attachment against the estate of the defendant, C. D., sufficient to pay the sum of ...... dollars (*the amount the affiant states the plaintiff is justly entitled to recover*) and the costs of this suit, which said order of attachment is made returnable to the next term of the ...... Court of ...... (*or* at the rules to be held for the ...... Court of ...... county on the ...... day of ......, 19....):

Now, therefore, if the said A. B. shall pay all costs and damages which may be awarded against him, or sustained by any person by reason of the suing out of the attachment, and pay to any claimant of any property seized or sold under or by virtue of said attachment all damages which he may recover in consequence of such seizure or sale, and also warrant and defend to any purchaser of the property such estate or interest therein as is sold, then the above obligation to be void, otherwise to remain in full force and virtue.

A. B. (Seal).
G. G. (Seal).

Text page 837; Barnes' W. Va. Code, Ch. 106, § 6.

217. (W. Va.) Payment and Forthcoming Bond by Garnishee on Attachment after His Liability Is Ascertained.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Payment and Forthcoming Bond by Garnishee
C. D.

Know all men by these presents, that we, F. F. and G. G., are held and firmly bound unto A. B. in the just and full sum of twenty-five hundred dollars, to be paid to the said A. B., to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this ...... day of ......, 19.....

The condition of the above obligation is such, that whereas the said A. B., plaintiff in an action at law (*or* suit in equity) against C. D., for the recovery of a claim (*or* a debt) arising out of contract (*or* recover damages for a wrong), pending in the ...... Court of ...... county (*or* city), did, this day (*or* on the ...... day of ......, 19....), on filing with X. Y., clerk of the said court, an affidavit as required by law, obtain from the said X. Y. an order of attachment against the estate of the defendant, C. D., sufficient to pay the sum of ...... dollars (*the amount the affiant states the plaintiff is justly entitled to recover*) and the costs of this suit, which said order of attachment is made returnable to the next term of the ...... Court of ...... county (*or* at the rules to be held for the ...... Court of ...... county on the ...... day of ......, 19....); and whereas the said attachment came to the hands of H. H., sheriff of said county, to be served and levied, who by virtue thereof, levied the said attachment on one mule and cart, and the harness pertaining thereto, as the property of the said C. D., in the possession of the said F. F., and also on a debt of five hundred dollars, alleged to be due to the said C. D. from the said F. F., by his promissory note to the said C. D., and whereas the above-bound F. F. has been summoned as a garnishee in the attachment aforesaid, and has acknowledged himself to be indebted to the said C. D. in the said sum of five hundred dollars, due to the said C. D. from the said F. F., by his promissory note, as aforesaid, and also to be in possession of the said mule and cart, with the harness pertaining thereto, which he admits to be the property of the said C. D.; and whereas it has been ordered by the said court that the said F. F. may give bond, with sufficient security, in the penalty of twenty-five hundred dollars, the sum in the above obligation named, payable to the said A. B., with condition to pay the amount due by the said F. F., as aforesaid, and to have the effects aforesaid forthcoming at such time and place as the said court may thereafter require; and whereas the said F. F. hath tendered the said G. G. as security in such bond as the law in such case requires:

Now, therefore, if the said F. F. shall pay to the said A. B. the said sum of five hundred dollars, and shall also have the said mule and cart, with the harness pertaining thereto, forthcoming at such time and place as the said court may hereafter require, then the above obligation to be void, otherwise to remain in full force and virtue.

F. F. (Seal).
G. G. (Seal).

Text page 847; Barnes' W. Va. Code, Ch. 106, §§ 10, 14.

218. (W. Va.) Replevy Bond by Defendant to Release the Whole Estate Attached.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Replevy Bond.
C. D.

Know all men by these presents, that we, C. D. and G. G., are held and firmly bound unto A. B. in the just and full sum of ...... dollars to be paid to the said A. B., to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this ...... day of ......, 19....

The condition of the above obligation is such, that whereas the said A. B., plaintiff in an action at law (*or* suit in equity) against C. D., for the recovery of a claim (*or* a debt) arising out of contract (*or* recover damages for a wrong), pending in the ...... Court of ...... county, did, this day (*or* on the ...... day of ......, 19....), on filing with X. Y., clerk of the said court, an affidavit as required by law, obtain from the said X. Y. an order of attachment against the estate of the defendant, C. D., sufficient to pay the sum of ...... dollars (*the amount the affiant states the plaintiff is justly entitled to recover*) and the costs of this suit, which said order of attachment is made returnable to the next term of the ...... Court of ...... county (*or* at the rules to be held for the ...... court of ...... county on the ...... day of ......, 19....;

and whereas the said A. B. did on the ...... day of ......, 19...., give bond with good security, approved by the said X. Y., in a penalty of at least double the amount of the claim sworn to, with condition to pay all costs and damages which may be awarded against him, or sustained by any person by reason of the suing out of the attachment, and to pay to any claimant of any property seized or sold under or by virtue of said attachment, all damages which he may recover in consequence of such seizure or sale, and also to warrant and defend any purchaser of the property, such estate or interest therein as is sold; and whereas the said order of attachment came to the hands of H. H., sheriff of said county, to be served and levied, who, by virtue thereof, levied on, and seized the following property found in the possession of the said C. D., to-wit (*here describe the property*): and the said C. D., desiring to have the whole estate so attached and seized, released by giving bond to perform the judgment (*or* decree) of the said court, hath tendered the above bound G. G. as security in such bond as the law in such case requires:

Now, therefore, if the said C. D., the defendant in said action, shall perform the judgment (*or* decree) of the said court, then the above obligation to be void, otherwise to remain in full force and virtue.

C. D. (Seal).
G. G. (Seal).

219. (W. Va.) Forthcoming Bond to Release or Restore Property Seized under Attachment.

In the Circuit Court of ...... County, West Virginia:

A. B.
v.
C. D.
} In Chancery. Forthcoming Bond.

Know all men by these presents, that we, F. F. and G. G., are held and firmly bound unto A. B. in the just and full sum of ...... dollars, to be paid to the said A. B., to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this ...... day of ......, 19.....

The condition of the above obligation is such, that whereas the said A. B., plaintiff in an action at law (*or* suit in equity) against C. D., for the recovery of a claim (*or* a debt) arising out of contract (*or* recover damages for a wrong), pending in the ...... Court of ...... county (*or* city), did, this day (*or* on the ...... day of ......, 19....). on filing with X. Y., clerk of the said court, an affidavit as required by law, obtain from the said X. Y., an order of attachment against the estate of the defendant, C. D., sufficient to pay the sum of ...... dollars (*the amount the affiant states the plaintiff is justly entitled to recover*) and the costs of this suit, which said order of attachment is made returnable to the next term of the ...... Court of ...... county (*or* at the rules to be held for the ...... Court of ...... county on the ...... day of ......, 19....); and whereas the said A. B. did on the ...... day of ......, 19...., give bond with good security, approved by the said X. Y., in a penalty of at least double the amount of the claim sworn to, with condition to pay all costs and damages which may be awarded against him, or sustained by any person by reason of the suing out of the attachment, and to pay to any claimant of any property seized or sold under or by virtue of said attachment, all damages which he may recover in consequence of such seizure or sale, and also to warrant and defend to any purchaser of the property, such estate or interest therein as is sold; and whereas the said order of attachment came to the hands of H. H., sheriff of said county, to be served and levied, who, by virtue thereof, levied on, and seized the following property found in the possession of the said F. F., to-wit (*here describe the property*) and the said F. F., desiring to retain in (*or* have returned to) his possession the property so levied on, and seized, hath tendered the above-bound G. G. as security in such bond, for the forthcoming thereof, as the law in such case requires:

Now, therefore, if the said F. F. shall have the said property so levied on and seized forthcoming at such time and place as the court may require, then the above obligation to be void, otherwise to remain in full force and virtue.

F. F. (Seal).
G. G. (Seal).

Idem.

220a. (W. Va.) Order Entering Motion to Quash an Attachment and Sustaining Said Motion.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Order.
C. D.

This cause came on this day to be heard upon the affidavit for an attachment filed in the cause; the order of attachment issued therein, and its levy upon the property of the defendant, as shown by the officer's return upon said attachment; upon the motion of the defendant to quash the said attachment, and upon argument of counsel for plaintiff and defendant thereon. Upon consideration of which the court is of opinion to, and doth hereby sustain said motion, and said attachment is hereby quashed.

And upon further motion of the defendant it is ordered that the property attached and seized by the Sheriff of this county under and by virtue of said attachment, be restored to the possession of the defendant. And it is adjudged, ordered and decreed that the defendant do recover of and from the plaintiff his costs in and about the prosecution of his suit in this behalf expended. (*When the jurisdiction of the court depends upon the validity of the attachment, and it is quashed and no further attachment is sued out, the order may continue as follows*: And the jurisdiction of the court in this case depending upon the maintenance of the attachment, and the plaintiff declining to take out further attachment herein, but relying upon the sufficiency of the attachment heretofore issued in this cause, it is therefore adjudged, ordered and decreed that the plaintiff's bill be and the same is hereby dismissed, but without prejudice to his right to institute another suit for the same cause, if he shall hereafter so desire). It is also adjudged, ordered and decreed that the plaintiff do pay unto the defendant his costs about his defense in this behalf expended, which shall include a statute fee of ...... dollars.

Text page 849; Barnes' W. Va. Code, Ch. 106, § 19; adapted from Carlin's Hogg's Equity Procedure.

220b. (W. Va.) Order Entering Motion to Quash an Attachment and Overruling the Same.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Order.
C. D.

This cause came on this ...... day of ......, 19...., to be heard upon the affidavit for an attachment filed in the cause; the order of attachment issued therein, and its levy upon the property of the defendant, as shown by the officer's return upon said attachment; upon the motion of the defendant to quash the said attachment, and upon argument of counsel for plaintiff and defendant thereon. Upon consideration of which the court is of opinion to, and doth hereby, overrule said motion to quash said attachment.

Idem.

221. (W. Va.) Answer of Garnishee in Attachment Suit.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Answer of E. F.
C. D. and E. F.

This defendant in answer to the bill of complaint filed against him and C. D., answering, says:

1. That this defendant, at the time of the service of the plaintiff's order of attachment upon him, he, this defendant, had not in his hands or possession any goods, effects or credits of the said defendant, C. D., nor any property belonging to the said C. D. in his possession or under his control.

2. Defendant further says that since the said order of attachment was served upon this defendant, no goods, effects or credits belonging to the defendant, C. D., have come into the hands, possession or under the control of this defendant; that this defendant is not in any wise liable upon any matter whatsoever, either now or at the time said order of attachment was served upon him, to his said co-defendant C. D. (*or, if on the contrary the garnishee was indebted when the said order of attachment was served upon him or had in his possession property or effects of the defendant, or if any property or effects of the defendant came into his hands after the service of the said order of attachment then the answer should state fully the nature of such property, and the amount of value thereof*).

This defendant now, having fully answered, prays to be hence dismissed with his reasonable costs in this behalf incurred, and as in duty bound he will ever pray, etc.

E. F.,
By Counsel.

A. M., Counsel.

Text page 835; Barnes' W. Va. Code, Ch. 106, § 14; adapted from Carlin's Hogg's Equity Procedure.

222. (W. Va.) Order against Garnishee in an Attachment Suit.

In the Circuit Court of ...... County, Virginia:

A. B.
v.
C. D. and E. F.
In Chancery. Order.

This cause came on this ...... day of ......, to be heard upon the order of publication duly executed as to the principal defendant, C. D., a non-resident of this State; upon the order of attachment duly issued herein against the property of said defendant, and the proceedings thereon by way of garnishment against the defendant, E. F.; upon the separate answer of the said E. F. and general replication to said answer; upon the depositions on behalf of the plaintiff taken and filed in the cause; and the said defendant, C. D., not further appearing, the court having considered the plaintiff's bill and the proof taken in support thereof, as well also as the matters contained in said answer, doth ascertain that there is due and owing to the plaintiff from the defendant, C. D., on the demand sued on in this cause, including interest thereon to date, the sum of ...... dollars, for the payment of which the attachment sued out in this cause creates a valid and binding lien upon the estate of the said C. D., in the hands of the said E. F.

And it appearing from the answer of the said E. F. that at the time the said attachment was issued in this case and the suggestion made thereon was served upon the said E. F., that the said E. F. was indebted to the said C. D. in an amount sufficient to pay the said sum of ...... dollars, with legal interest thereon until paid on the costs of this suit; it is therefore adjudged, ordered and decreed that the said E. F. do pay unto said A. B. the said sum of ...... dollars, with interest thereon from this date until paid, and the costs of this suit, including the costs of said attachment and suggestion thereon; and when the same shall have been paid by the said E. F. it shall constitute a credit to that extent upon the indebtedness of the said E. F. to said C. D., and be taken, treated and applied as a payment of that sum by the said E. F., upon his indebtedness to the said C. D.; and when the said sum of ...... dollars shall be so paid, the same shall operate as a payment or extinguishment of the said debt of ...... dollars, due and owing from the said C. D. to the said A. B. All of which is adjudged, ordered and decreed accordingly.

Idem.

223. (W. Va.) Order Making up Issue on Plea in Abatement of an Attachment.

In the Circuit Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

This cause came on this ...... day of ......, 19...., to be heard upon the plaintiff's bill and exhibits; the affidavit filed herein for an attachment; upon the order of attachment issued herein and the levy thereof, and return thereon made by the officer levying the same; upon the plea in abatement of said attachment and the plaintiff's general replication thereto, and was argued by counsel. Upon consideration of all which it is hereby ordered that a jury be impaneled at the bar of this court, in the manner provided for the trial of an action at law, to try and determine, whether or not, at the time the affidavit for the order of attachment in this cause issued, was made, the defendant had left, or was about to leave the State, with intent to defraud his creditors (*or other grounds*). And upon the trial of such issue before the jury, the plaintiff in this suit shall have the affirmative thereof, and the defendant shall hold the relation of defendant thereto, and the trial thereof shall proceed in the manner provided for the trial of issues in actions at law.

Text page 854; Barnes' W. Va. Code, Ch. 106, § 19; adapted from Carlin's Hogg's Equity Procedure.

224. (W. Va.) Decree after Verdict on Intervention in Attachment.

In the Circuit Court of the ...... of ......, West Virginia:

C. D.
v. } Decree.
A. B.

This cause came on again this ...... day of ......, 19...., to be heard upon the papers formerly read therein; upon the former orders and decrees made and entered therein; upon the issue heretofore directed in this cause to be tried by a jury this day returned therein, in the words and figures following: "We, the jury, find that the petitioner P. H. S., has no lien upon the property, or any of it, levied upon by the sheriff of ...... on the attachment sued out by A. B. in this cause, against the estate of C. D." (*Continue by releasing attachment and decreeing other appropriate relief.*)

Idem.

225. (W. Va.) Decree Hearing Cause on Intervention and Garnishment in Attachment.

In the Circuit Court of the ...... of ....: West Virginia:

A. B.
v.
C. D., et al. } In Chancery. Decree.

This cause by consent of parties came on this ...... day of ......, 19......, to be heard together, upon the motion of C. D. to abate the attachment sued out therein. On motion of A. B., leave is given him to file his petition in this cause, and the same is hereby accordingly filed in open court. And neither party requiring a jury, the cause came on to be heard on this ...... day of ......, 19...., on the motion of C. D., one of the defendants and E. F., a garnishee summoned in the cause, to abate the said attachment on the ground that said attachment was not made returnable as required by the statute, and that it was issued on false suggestions, and without probable cause, and on the petition of A. B., and the answer of E. F., the garnishee, and on the depositions taken by the parties respectively and returned in the cause; on consideration thereof the court, being of opinion that C. D. does not appear to have any estate or debts due it in the ...... of ......, or to have had any such at the date of such attachments, or any interest in, or claim upon, the property held by the said E. F. at ......, in said ......, doth abate the attachment in the said cause, and doth adjudge, order and decree that the said E. F. recover from the complainant his costs, and that the sheriff do restore the attached property to the said E. F.

226a. (W. Va.) Decree for Sale of Property Attached When Debt Is Not Due.

In the Circuit Court of ...... County, West Virginia:

A. B.
v.
C. D. } In Chancery. Order.

This cause came on this ...... day of ......, 19...., to be heard upon the bill and its exhibits; upon the answer of the defendant with general replication thereto; upon the affidavit filed herein for an attachment; upon the attachment issued herein, the levy thereof and return thereon made by the officer levying the same; upon the depositions for the plaintiff and defendant, taken and filed in the cause; and upon argument of counsel. (*If service was by publication, follow Form No. 222 as far as necessary*). And the court doth find and so adjudge, order and decree, that the property of the said defendant levied on by virtue of said attachment issued in this cause is liable to the payment of the plaintiff's debt in the bill and proceedings in this cause mentioned and described, and the costs of this suit; and it further appearing to the court that this suit was brought upon a debt not due and payable until the ...... day of ......, 19...., at which time the said debt, with its then accumulated interest, will amount to the sum of ...... dollars, it is therefore adjudged, ordered and decreed that said plaintiff, A. B., do recover of and from the said defendant, C. D., the said sum of ...... dollars, not to be paid, however, until the said ...... day of ......, 19...., and from which time the same shall draw legal interest until paid; and it is further adjudged, ordered and decreed that said plaintiff do recover his costs in and about the prosecution of this suit, and of said attachment and proceedings thereon, in this behalf expended and incurred.

And it is further adjudged, ordered and decreed that the said C. D. do pay the costs of this suit to be taxed by the clerk of this court, within ...... days from the rising of this court; and it is further adjudged, ordered and decreed that the said C. D. do pay the said sum of ...... dollars with the interest thereon accrued on the ...... day of ......, 19...., the time when the same shall be due and payable; and in default of the payment of the said costs and the said debt at the respective times herein provided, that then the sale be made of the property attached, and fully described in the officer's return upon the order of attachment issued herein, and if sale be made in order to pay off and discharge the costs of this suit, that said sale be made for cash as to so much of the purchase money as may be necessary to pay the costs, as well as the costs incident to such sale; and that as to the residue the same be on a credit as to one-half of said residue corresponding with the time said debt shall have to run until it becomes due and payable; that is, on a credit extending to the ...... day of ......, 19...., and as to the residue of said purchase money, the same shall be on a credit of ...... from the time of sale, the purchaser giving his notes bearing interest from the time of sale, with sufficient surety, and the said special commissioner hereinafter appointed shall retain the legal title as a further security; but if the said C. D. shall pay off and discharge the costs of this suit, then the said special commissioner is hereby directed to make no sale of said real estate until after the said ...... day of ......, 19...., the time when the said debt shall become due and payable; and if, when the same shall become due and payable, the said C. D. shall not pay the same within ...... days thereafter, then said special commissioner shall sell the said property, or so much thereof as may be necessary, to pay off and discharge said debt and the costs of sale upon the following terms: (*here prescribe the terms*); but before making such sale, said commissioner shall advertise the time, terms and place thereof (*here prescribe the manner and time of notice and place of sale, and continue in the usual manner of any ordinary decree of sale.*)

Text page 858; Barnes' W. Va. Code, Ch. 106, §§ 20-22; adapted from Carlin's Hogg's Equity Procedure.

226b. (W. Va.) Order or Decree of Sale of Property upon Attachment.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Order.
C. D.

This cause came on this ...... day of ......, 19...., to be heard upon the bill and its exhibits, the answer of the defendant with general replication thereto, upon the attachment issued herein, the levy thereof, and the return thereon made by the officer levying the same; upon the depositions for the plaintiff and defendant, taken and filed in the cause, and upon argument of counsel, (*or,* upon the bill taken for confessed, the defendant having been duly served with process and not appearing, upon the exhibits filed with the bill, upon the depositions for the plaintiff taken and filed in the cause, and was argued by counsel, *or* upon the order of publication duly executed as to the defendant who is a nonresident and has been regularly proceeded against as such; upon the bill and its exhibits duly filed at rules, the decree nisi properly taken thereon and regularly set for hearing by the complainant; upon the affidavit filed herein for an attachment; upon the attachment issued herein, the levy thereof and return thereon made by the officer levying the same; upon the depositions filed in the cause taken on behalf of the plaintiff; and upon the argument of counsel); upon consideration of all which the court is of opinion to and doth find that there is now due and owing from the defendant to the plaintiff on account of the debt in the bill and proceedings mentioned, including the interest thereon from this date, after allowing all payments, credits, and sets-off, to which the said defendant is in any wise entitled, the sum of ...... dollars, and that the said plaintiff ought to recover from the said defendant the sum of ...... dollars, with interest thereon from this date until paid. It is, therefore, adjudged, ordered and decreed that the defendant do pay to the plaintiff the sum of ...... dollars, the debt in the bill and proceedings mentioned and described with legal interest thereon from this day until paid, and also the costs of this suit and the costs attendant upon said attachment, (*or if service be by publication*, but this being a proceeding by order of publication and attachment of the property of the said defendant found in this county, without any personal service on the said defendant, and the said defendant not having entered his appearance to this suit, the court doth not enter any personal decree against the said defendant; but doth find and doth adjudge, order and decree that the property of the said defendant levied on by virtue of said attachment, is liable to the payment of the said sum of ...... dollars, with interest thereon from this date until paid, and the costs of this suit and attachment issued therein), and it further appearing to the satisfaction of the court that there was levied upon under and by virtue of the said order of attachment herein set out, the following:

a. *If the levy were made on personal estate, say,* personal estate: *here describe the same,* belonging to the said defendant, to satisfy the plaintiff's said debt and claim; and it appearing that the said property is still under the levy of the said attachment, and is liable to the payment of the said debt and claim of the plaintiff, it is therefore adjudged, ordered and decreed that said personal property be sold to pay the plaintiff's said debt and claim and interest thereon from this date, and the costs of this suit.

And it appearing to the satisfaction of the court that the plaintiff has given bond as required by law, it is ordered that the sheriff of this county do sell the said property levied on by the order of attachment as aforesaid, and now in his custody, for cash, after advertising the time, terms and place of such sale, as the law provides for the sale of personal property under execution. And out of the proceeds of such sale he shall pay off and discharge the plaintiff's debt and claim of ...... dollars as aforesaid, with legal interest thereon until paid, and the costs of this suit, and the surplus thereof, if any, he shall pay over to the said defendant.

b. *Or if the levy were made on real estate, say,* real estate: *here describe the same,* belonging to the said defendant, to satisfy the plaintiff's said debt and demand and it appearing to the satisfaction of the court that the property is still under the levy of the said attachment, and is liable to the payment of the said debt and claim of the plaintiff, and that no personal property belonging to the said defendant was levied upon (*or,* that the personal property levied upon has been sold and the proceeds applied to the debt due the said plaintiff, leaving an unpaid balance of $...... with interest thereon until paid), it is therefore adjudged, ordered and decreed that unless the said defendant shall pay to the said plaintiff the said sum of $......, with interest thereon and the costs of this suit and attachment within ...... days from the rising of this court, the said property, or so much thereof as may be necessary, be sold to pay the plaintiff's said debt and interest thereon from this date, and the costs of this suit and attachment issued therein.

And it is further adjudged, ordered and decreed that for the purpose of making such sale the court doth hereby appoint F. K. a special commissioner, who shall advertise the time, terms and place of such sale for four successive weeks in the ......, a newspaper published in ......, and which sale shall be made upon the following terms: (*here set forth the terms*); and the said F. K., special commissioner, as aforesaid, shall report to this court at the next term thereof his actions hereunder.

c. If the service is by publication and the defendant has not appeared, insert: And it is further adjudged, ordered and decreed that before said sale be made, the said plaintiff, or some one for him, shall give bond with sufficient security before the Clerk of this court in the penalty of ...... dollars, conditioned that the plaintiff will perform such future order as may be made by the court in this suit in case the said defendant shall hereafter appear and make defense herein within the time prescribed by law.

Idem.

227. (W. Va.) Order of Arrest, Where the Defendant in an Action or Suit Is Removing, Converting or Assigning His Property, or Is about to Leave the State to Reside Permanently.

In the Circuit Court of ...... County, West Virginia:

A. B., Plaintiff
v.
C. D., Defendant. } In Chancery. Order of Arrest.

To the Sheriff of the County of ......:

You are hereby required in the name of the state of West Virginia, to arrest the defendant, C. D., and commit him to the jail of the said county (*or* city) of ......, to be there safely kept, unless or until he shall give bond, with good security, in the penalty of ...... dollars conditioned according to law, and that you return your proceedings under this order to the next term of the ...... Court of said county.

Witness, E. F., clerk of the said court, this ...... day of ......, 19.....

E. F., Clerk.

Barnes' W. Va. Code, Ch. 106, §§ 30-37.

228. (W. Va.) Order Directing that Defendant, Who Is Removing, Converting or Assigning His Property, or Is about to Leave the State to Reside Permanently Be Held to Bail.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Order directing the Defendant to be held to bail.
C. D.

This day came A. B., plaintiff in the above styled action (*or* suit), now pending in the ...... court of ...... county, in person, before the said court (*or* before me, Y. Z., judge, *or* E. F., clerk, of said court, in vacation), and, by affidavit made in due form of law, which said affidavit is filed with the papers in this cause, did show sufficient cause for the arrest of the defendant, C. D.; therefore the court doth (*or* I, the said Y. Z., judge, *or* E. F., clerk, as aforesaid, do) order and direct that the said defendant be arrested, and held to bail in the sum of ...... dollars.

Witness E. F., Clerk (*or* Y. Z. Judge) of the said court, this ...... day of ......, 19.....

E. F., Clerk (or, Y. Z. Judge).

Idem.

229. (W. Va.) Bond by Plaintiff for Order of Arrest Where the Defendant in a Suit Is Removing, Converting or Assigning His Property or Is about to Leave the State to Reside Permanently.

In the Circuit Court of ...... County, West Virginia:

A. B.
v. } In Chancery. Bond by Plaintiff.
C. D.

Know all men by these presents, that we, A. B. and G. G., are held and firmly bound unto the state of West Virginia in the just and full sum of ...... dollars, to be paid to the state of West Virginia, to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this ...... day of ......, 19.....

The condition of the above obligation is such, that whereas the said A. B., plaintiff in the above styled suit, now pending in the ...... Court of ...... County, has appeared in person before the said court (*or* Y. Z. judge *or* E. F. clerk, of the said court, in vacation) and shown by affidavit made in due form of law sufficient cause for the arrest of the defendant, C. D.; and whereas the said court (*or* judge, *or* clerk) has ordered and directed that the said defendant be arrested, and held to bail in the sum of ...... dollars; and whereas the said plaintiff, desiring that the said court (*or* judge *or* the said clerk) shall issue an order for the arrest of the said defendant, hath tendered the above-bound G. G. as security in such bond as the law in such case requires.

Now, therefore, if the said plaintiff will pay the defendant all damages he may sustain by reason of the arrest, should it thereafter appear that the order was wrongfully obtained, then the above obligation to be void, otherwise to remain in full force and virtue.

A. B. (Seal).
G. G. (Seal).

Idem.

230. (W. Va.) Bail Bond by a Defendant in a Suit Who Has Been Arrested under Order of Arrest.

In the Circuit Court of ...... County, West Virginia:

A. B.
v.
C. D.
} In Chancery. Bail Bond.

Know all men by these presents, that we, C. D. and G. G., are held and firmly bound unto the state of West Virginia in the just and full sum of ...... dollars, to be paid to the state of West Virginia, to which payment we bind ourselves, and our heirs, executors and administrators, jointly and severally; and we hereby waive the benefit of our homestead exemption as to this obligation. Sealed with our seals and dated this ...... day of ......, 19.....

The condition of the above obligation is such, that whereas the above-bound C. D. has been arrested by S. S., sheriff of ...... county, by virtue of an order of arrest, issued by the clerk of the ...... Court of the said ...... in the above styled suit, now pending in the said court, wherein A. B. is plaintiff and C. D. is defendant; and whereas the said C. D. desiring to be released from the arrest so made, hath tendered the above-bound G. G. as security in such bond as the law in such case requires;

Now, therefore, in case there shall in the suit be any decree or order on which a writ of *fieri facias* may issue, and within four months after such decree or order is rendered or made, interrogatories be filed under Ch. 141, Sec. 4 of Barnes' Code 1923, with a commissioner of the court wherein such decree or order is, if the defendant, will, at the time the commissioner issues a summons to answer such interrogatories, be in the county in which such commissioner may reside, and will, within the time prescribed in such summons, file proper answers upon oath to such interrogatories, and make such conveyance and delivery as is required by the said chapter, or in case of failure to file such answer and make such conveyance and delivery, if the said defendant will perform and satisfy the decree or order, then the above obligation to be void, otherwise to remain in full force and virtue.

C. D. (Seal).
G. G. (Seal).

Idem.

XXXIC. Forms in Attachment Proceedings Applicable to Both Virginia and West Virginia

231. (Va. and W. Va.) Order Overruling Exceptions to a Bond.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Order.
C. D. and E. F.

The exceptions filed by the defendant (*or* plaintiff) to the (*describe bond*) bond given in this cause, having been argued by counsel and considered by the court, said exceptions are hereby overruled, and said bond adjudged to be sufficient.

Text page 818; Va. Code, §§ 6379-6410; Barnes' W. Va. Code, Ch. 106.

232. (Va. and W. Va.) Order Awarding Rule against Garnishee or Co-defendant in Attachment for Failure to Appear and Answer.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. and E. F.
} Order Awarding Rule against Garnishee (Co-defendant).

This day came the plaintiff, by his attorney, and E. F., who has been served with an attachment who, the petition (bill, affidavit) of the said plaintiff alleged, is indebted to (*or* has in his possession effects of) the principal defendant not appearing, on the motion of the plaintiff by his attorney, it is ordered that the said garnishee (co-defendant) be summoned to appear here on the ...... day of ......, 19...., at ...... o'clock A. M., to show cause, if any he can why he should not be attached and fined for his contempt in not attending the court as such garnishee and making answer to said attachment.

Text Page 855; Va. Code, § 6400; Barnes' W. Va. Code, Ch. 106, § 16

233. (Va. and W. Va.) Report of Officer When Bond Is Given by Defendant in Attachment.

A. B.
v.
C. D.
} Report of Sheriff (*or* Sergeant).

To the ...... Court of ......:

Under the above styled attachment issued from the clerk's office of the ...... Court of ......, I, on the ...... day of ......, 19...., levied on and took possession of the following property belonging to the defendant, to-wit: (*here describe the property*), as evidenced by the return made on the said attachment; and the defendant, desiring to have the said property released from the said attachment, entered into a bond as required by law, to perform the judgment of the said court, which said bond is herewith returned to and filed with the clerk of this court.

M. V., Sheriff (*or* Sergeant) of ......

Text page 847; Va. Code, § 6394; Barnes' W. Va. Code, Ch. 106, § 10.

234. (Va. and W. Va.) Order Dismissing Garnishee or Co-defendant in Attachment.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. and E. F. } Order Dismissing Garnishee (Co-defendant).

This day came the plaintiff by his attorney, and it appearing to the court from the answer under oath of E. F., who has been served with an attachment as garnishee (*or*, co-defendant) in this cause, that he is not indebted to the defendant (*or, in Va.,* was not indebted to the defendant at the time the attachment in this case was served upon him), it is ordered that E. F., the said garnishee, (*or*, co-defendant) be dismissed, with his costs in this behalf expended.

Text page 859; Va. Code, § 6398; Barnes' W. Va. Code, Ch. 106, § 5.

235. (Va. and W. Va.) Order Directing Garnishee or Co-defendant to Show Cause Why He Shall Not Be Fined for Contempt for Parting with Goods Attached.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. and E. F. } Order to show cause.

It appearing by the return of the sheriff (*or* sergeant) of ...... county (*or* city) that E. F. in whose custody the goods levied upon on the ...... day of ......, 19...., were left, and to whom, as garnishee (*or* co-defendant), a copy of the attachment issued in this cause was delivered, has parted with the property so levied upon and left in his custody, the court doth order that the said E. F. appear here on the ...... day of ......, 19...., at ...... o'clock ...... M. to show cause, if any he can, why he shall not be fined for contempt in parting with said goods, or else deliver the same or their alternate value.

Adapted from Carlin's Hogg's Equity Procedure.

236. (Va. and W. Va.) Report of Officer Asking for Sale of Property Taken under Attachment, Which Is Expensive to Keep, or Perishable.

A. B.
v. } Report of Sheriff (*or* Sergeant).
C. D.

To the ...... Court of ......:

Under the above styled attachment issued from the clerk's office of the ...... Court of ......, I have levied said attachment and taken possession of the following property, belonging to the defendant, to-wit: (*here describe the property*); and, as the said property is such as is expensive to keep (*or* perishable), I respectfully request that an order be entered directing the same to be sold.

M. V., Sheriff (*or* Sergeant) of ......

Va. Code, § 6397; Barnes' W. Va. Code, Ch. 106, § 13.

237. (Va. and W. Va.) Order before Attachment Is Decided, for the Sale of Property Expensive to Keep or Perishable.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Order directing sale.
C. D.

It appearing from a report of the officer who levied the attachment in this case, that the same was levied upon property such as is expensive to keep (*or* perishable), the court doth order that the said officer sell the said property so attached, at such time and place, on such terms, and after such public notice as the law directs. And the said officer is required to return an account of the sale, specifying therein the several articles sold, the persons to whom sold, and the prices thereof, to the next term of court.

Idem.

238. Plea Controverting the Existence of the Grounds upon Which an Order of Attachment Was Issued.

State of ......,
...... of ......, to-wit:
In the ...... Court of the ...... of ......, ...:

A. B.
v. } Plea.
C. D.

This defendant for plea to the attachment issued in the above entitled cause says that the said plaintiff ought not to maintain his said attachment because, this defendant says, the grounds stated in plaintiff's affidavit (petition) for the attachment issued in this cause did not exist at the time of the making and filing said affidavit, to-wit: (*here set out verbatim the grounds in plaintiff's affidavit*).

The defendant therefore denies that any ground or grounds existed for an attachment in the above cause as set forth and specified in the said affidavit filed herein, and upon which the attachment in this cause was issued.

The defendant therefore prays that the issue arising upon the plea of this defendant be tried by a jury, and if the verdict thereon shall be for this defendant, this defendant further prays that judgment be entered that the said attachment issued in the above cause be abated.

C. D.

Q. P., Counsel.

Taken, subscribed and sworn to before me this ...... day of ......, 19.....

....
Notary Public.

Text page 854; Va. Code, § 6403; Barnes' W. Va. Code, Ch. 106, § 19.

239. Order Filing Plea in Abatement of an Attachment.

In the ...... Court of the ...... of ......, ...:

A. B. }
v. } Order.
C. D. }

This day the defendant tendered a plea in abatement of the attachment issued in this cause and asked leave to file the same. And thereupon the said plea is hereby filed, to which plea the plaintiff replies generally.

240. (Va. and W. Va.) Petition by Third Party Disputing the Validity of Attachment.

In the ...... Court of the ...... of ......, ...:

A. B. }
v. } Petition.
C. D. }

To the Hon. ......, Judge of the said Court:

The undersigned, your petitioner, respectfully sheweth unto Your Honor:

1. That he is informed and believes, and so states, that an order of attachment was issued in the above entitled cause against the property of the defendant, C. D. and was on the ...... day of ......, 19...., levied on the property mentioned and described in the officer's return made upon said order of attachment, to the record in which case, with all the papers, exhibits and filed thereunto belonging, reference is hereby made for the purposes of this petition, and asked to be taken and read as part hereof.

2. Your petitioner further sheweth unto Your Honor that on the ...... day of ......, 19...., and subsequently to the institution of the above entitled cause, your petitioner brought a suit also against the said C. D. in Your Honor's Court, in which an attachment was issued and levied upon the same property upon which the attachment issued in the above entitled cause was levied, as will more fully appear by the record in your petitioner's case, together with the exhibits, papers and files therein, hereby referred to and made part of this petition.

3. Your petitioner further sheweth unto Your Honor that he is advised, and so charges, that the attachment levied in the above cause in favor of the said A. B. is not a valid attachment, because the petition (*or* affidavit) upon which it is based is defective, in this (*here set out the defect in the petition or affidavit, or any other ground that exists for invalidating the attachment may be set out*).

4. Your petitioner further avers that by virtue of the attachment levied in the suit in which your petitioner is plaintiff, against the said C. D., petitioner has a valid and subsisting lien upon the property attached in the above entitled cause, wherein the said A. B. is plaintiff and the said C. D. defendant.

5. Your petitioner further sheweth unto Your Honor that he is ready and willing to give the security for costs as required by the laws of this state in a procedure of this character, in such sum and in such conditions as the court may prescribe.

Your petitioner therefore prays that a jury may be impaneled to inquire into the claim of your petitioner, as hereinbefore set forth, unless the same be waived and that the court may make such other orders as may be necessary to protect the rights of your petitioner; and grant unto petitioner such other further relief as the nature of his case may require.

E. F., By Counsel.

Q. M., Counsel.

Text page 850; Va. Code, § 6407; Barnes' W. Va. Code, Ch. 106, § 23; Adapted from Carlin's Hogg's Equity Procedure.

241. (Va. and W. Va.) Order Filing Petition of Third Party Making Claim to the Property Attached or to Some Interest Therein.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Order.
C. D.

This day E. F. presented to the court his petition, setting forth therein a claim of ownership to the property levied on by virtue of the attachment sued out in this cause, and the court, having read and considered said petition, it is adjudged, ordered and decreed that said petition be and the same is hereby filed.

Idem.

242. (Va. and W. Va.) Order Making up Issue on Petition of Intervention in Attachment.

A. B.
v. } Order.
C. D.

In the ...... Court of the ...... of ....:

It is hereby ordered that a jury be duly impaneled to try at the bar of this court: "Whether the petitioner, E. F., has any lien on the property, or any of it, levied upon by the ...... of ......, under the attachment sued out by A. B. in this cause against the estate of C. D." And on the trial of said issue before the jury said petitioner shall be treated as the plaintiff and A. A., the plaintiff in the suit, as the defendant.

Idem.

243. (Va. and W. Va.) Order Finding against Intervener in an Attachment Suit.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Order.
C. D.

This cause came on this ...... day of ......, 19...., to be heard upon the former orders made and entered herein; upon the former proceedings had in this cause; upon the verdict of the jury heretofore entered in this cause; upon the petition of E. F., the intervener herein, to set aside said verdict and award him a new trial; upon the bills of exceptions taken to the rulings and opinions of the court made and rendered upon the trial before the jury of the issue heretofore directed and tried in this cause; upon all the papers heretofore filed and read therein; and upon the argument of counsel. And it appearing from the said verdict rendered by the jury impaneled in this cause that the claim of the said petitioner is not sustained, it is therefore adjudged, ordered and decreed that the said motion be, and the same is, hereby overruled, and that the said petitioner, E. F., hath no title to, lien upon, or interest in the funds, debts and effects attached in this cause; and it is further adjudged, ordered and decreed that the petition of the said E. F. be, and the same is, hereby dismissed at the costs of the said petitioner.

Idem.

244. (Va. and W. Va.) Judgment on Attachment against Defendant, and Then Judgment against Garnishee.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Judgment on Attachment.
C. D.

This day came the plaintiff, by his attorney, and the defendant, C. D., was solemnly called, but came not, (*or as in Form No.* ......). Whereupon E. F. who had been served with an attachment as garnishee in this cause, came into court, and being sworn, upon his oath declares that he is indebted (*or in Virginia,* that he was indebted at the time the attachment in this cause was served upon him) to the said C. D. only in the sum of ...... dollars. And it being proved that the said C. D. is indebted to the plaintiff in the sum of ...... dollars mentioned in the said attachment, with interest thereon from the ...... day of ......, 19...., it is therefore considered by the court that the plaintiff recover against the said C. D. the said ...... dollars, with interest thereon to be computed at the rate of ...... per centum per annum from the said ...... day of ......, 19...., until paid, and his costs by him in this behalf expended. And it is further considered that the plaintiff recover against the said E. F., the aforesaid sum of ...... dollars towards satisfying this judgment, and any payment made by the said E. F. on the judgment herein rendered against him shall be a credit on the amount due by him to the said C. D.

Text page 859; Va. Code, §§ 6398, 6403; Barnes' W. Va. Code, Ch. 106, §§ 5, 19, 27.

245. (Va. and W. Va.) Judgment on Attachment against Defendant, and Then against Garnishee on Verdict Fixing Amount Due from Him to Defendant.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Judgment on Attachment.
C. D.

This day came the plaintiff, by his attorney, and the defendant, C. D., was solemnly called, but came not, (*or, as in Form No. 226a*). Whereupon E. F., who had been served with an attachment in this cause, came into court, and being duly sworn, upon his oath declares that he is indebted (*or, in Virginia*, that he was indebted at the time the attachment in this cause was served upon him) to the said C. D. only in the sum of ...... dollars, and that he has not (*or, in Virginia,* that he did not have at the time of serving the said attachment) any other effects of the said C. D. in his hands. And thereupon, the plaintiff alleging that the said E. F. hath not discovered the true amount due from him to the defendant, or what goods and chattels belonging to the defendant are in his possession (and, *in Virginia*, the said E. F. demanding a jury) came a jury, to-wit: (*here give names of jurors*) who, being duly sworn diligently to inquire what is the true amount due from the said E. F. to the defendant, and what goods and chattels are in his possession belonging to the defendant, upon their oath do say, that there is due from the said E. F. to the defendant the sum of ...... dollars, and no more and that there are no goods and chattels in the said E. F.'s possession belonging to the defendant. And it being proved that the said C. D. is indebted to the plaintiff in the sum of ...... dollars mentioned in the said attachment, with interest thereon from the ...... day of ......, 19...., it is therefore considered by the court that the plaintiff recover against the said C. D. the said sum of ...... dollars, with interest thereon to be computed at the rate of six per cent. per annum from the said ...... day of ......, 19...., until paid, and his costs by him in this behalf expended. And it is further considered that the plaintiff recover against the said E. F. the aforesaid sum of ...... dollars towards satisfying this judgment, and any payment made by the said E. F. on the judgment herein rendered against him shall be a credit on the amount due by him to the said C. D.

Idem.

246. (Va. and W. Va.) Exceptions to a Bond.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Exceptions to bond.
C. D. and E. F.

Exceptions of the plaintiff (*or* defendant) made to the bond (*here state to what bond the exceptions are taken*) in this suit.

The plaintiff (*or* defendant) in the above entitled cause hereby excepts to the said bond, bearing date the ...... day of ......, 19...., for the following reasons and upon the following grounds:

First. Because (*here set forth the reasons and grounds of the exceptions*).

Second. Because (*here set forth the further reasons and grounds of the exceptions*).

Third. Because (*here set forth the other reasons, if any, and continue in this way until all the grounds for exceptions to the bond are set forth*).

The plaintiff (*or* defendant) therefore and for the reasons above given, hereby excepts to the said bond and prays that his said exceptions may be sustained, and that the said ...... be ruled to file a good bond with sufficient security to be approved by this court, on or before a day certain to be prescribed by this court.

A. B., By Counsel.

Q. M., Counsel.

Text page 837; Va. Code, §§ 6384, 6395; Barnes' W. Va. Code, Ch. 106, § 6; adapted from Carlin's Hogg's Equity Procedure.

247. (Va. and W. Va.) Order Sustaining Defendant's Exceptions to a Bond.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Order.
C. D.

Upon motion of the defendant the exceptions taken to the (*describe bond*) given by the plaintiff in this cause are hereby set down for argument. And the matters of law arising upon the said exceptions being argued by counsel and considered by the court, the court is of the opinion to and doth hereby sustain said exceptions. It is therefore adjudged, ordered and decreed that the said bond be and the same is hereby adjudged insufficient, and the said plaintiff is hereby required to give a new and sufficient bond on or before the ...... day of ......, 19...., to be approved by the court, and upon the plaintiff's failure so to do, the officer having in his custody the property herein attached shall return the same to the possession of the defendant.

Idem.

248. (Va. and W. Va.) Order Sustaining Exceptions to Forthcoming Bond in Attachment Suit and Requiring Officer to Obtain a Good Bond.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } Order.
C. D.

Upon motion of the plaintiff, the exceptions heretofore endorsed to the replevy bond taken by the officer levying the attachment sued out in this cause are hereby set down for argument. And the said exceptions being argued and considered by the court, are hereby sustained and the said bond adjudged to be insufficient. It is therefore adjudged, ordered and decreed that the said officer, ..., ... of this ......, be and he is hereby required on or before the ...... day of ......, 19...., to file in the papers of this cause a good bond, with sufficient security to be approved by the court; and upon the failure of such officer so to do, the sureties upon his official bond shall be liable to the plaintiff as and for a breach of the same, should the said plaintiff sustain any loss or damage in consequence of the insufficiency of said replevy bond taken by the said officer levying the attachment sued out herein.

Idem.

XXXII. Forms for Proceedings in Judicial Sales

(See also V, Forms in Creditors' Suits.)

249. Decree Confirming Commissioner's Report in Creditors' Suit to Enforce Judgment Liens, and Appointing Special Commissioner to Sell Land.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Decree.
C. D., et als.

This cause came on again this ...... day of ......, 19...., to be further heard upon the papers heretofore read therein; upon the former orders and decrees entered therein; upon all the former proceedings had in said cause; upon the report of the commissioner in chancery, P. W., to whom this cause was heretofore referred to take account of the real estate owned by the defendant, C. D., and the liens existing thereon and their respective priorities, and was argued by counsel. And there being no exception to said report, and the court perceiving no just ground of exception thereto, the same is hereby ratified and confirmed.

And as from said report it doth appear, the court doth adjudge, order and decree that the said C. D. is the owner of the following real estate situate in the district of ......, County of ......, and State of ......, consisting of two tracts, the first of which contains ...... acres, and is fully described in said report, and the other of which contains ...... acres, and is likewise described in said report.

And as from said report it doth also appear, it is further adjudged, ordered and decreed that the following are the liens and the order of their priority against the said real estate:

First. The judgment in favor of A. B. for ...... dollars, obtained in the ...... court of the ...... of ......, in said state, on the ...... day of ......, 19..., which now amounts, including the interest thereon, to ...... dollars, and ...... dollars costs adjudged in the action in which said judgment was rendered.

Second. The judgment in favor of M. W. (*here describe same.*)

Third. (*Here describe the third lien, and so on until all the liens are thus set forth in the decree.*)

It is further adjudged, ordered and decreed that the said C. D. do, within thirty days from the rising of this court pay unto the said A. B., M. W. (*naming all the lien-holders*), their said lien debts and judgments respectively, as hereinbefore ascertained and adjudicated, with interest thereon from this date until paid, with costs in the respective actions in which said judgments were rendered, and the costs of this suit; and in default of such payment, it appearing that the rents, issues and profits from the said real estate will not in five years pay off and discharge the liens thereon, it is further adjudged, ordered and decreed that said real estate be sold, or so much thereof as may be necessary, to pay off and discharge all of the said lien debts and judgments and costs, according to their respective priorities as hereinbefore ascertained and adjudicated, and the costs of this suit, at public auction to the highest bidder, at the front door of the court house of this county, upon the following terms, to-wit: (*here set out the terms of sale*).

And for the purpose of making said sale, it is adjudged, ordered and decreed that Q. M. be, and he is hereby, appointed a special commissioner, who shall, before making such sale, advertise the time, terms and place thereof for four successive weeks in the ......, a newspaper published in said county, and by posting a notice thereof for a like period at the front door of the court house of said county, and by hand bills, and shall give bond (*if there be more than one commissioner, the decree may provide that only the acting commissioner shall give bond*) in the penalty of ...... dollars with good security before the clerk of this court, conditioned for the faithful performance of his duties as such commissioner, and to account for and pay over all moneys which may come into his hands by virtue of his appointment as such commissioner, and what he shall do hereunder, he shall report to the next term of this court.

Text pages 865, 875 Va. Code, § 6472; Barnes' W. Va. Code, Ch. 139, § 7.

250. Decree of Sale against Lands of Decedent.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
E. F. et als.
In Chancery. Decree.

This cause came on against this ...... day of ......, 19...., to be further heard upon the papers heretofore read therein; upon the former orders and decrees entered therein; upon all the former proceedings had in said cause; upon the report of the commissioner in chancery, J. H. to whom this cause was heretofore referred to take account of the real estate owned by the defendant, E. F., and the liens existing thereon and their respective priorities, and was argued by counsel. And there being no exception to the report of the commissioner, J. H., and the court perceiving no just ground of exception to said report, the same is ratified and confirmed. And it appearing from the said report that there is now in the hands of E. F., the personal representative of the decedent, C. D., the sum of ...... dollars, available personal assets of the estate of C. D. to apply upon the payment of his debts, it is therefore adjudged, ordered and decreed, that the said sum of ...... dollars, be and the same is hereby applied to the payment, *pro rata,* of the following judgment liens, which are of equal dignity and priority with each other: (*here specify the said judgment liens.*)

And it further appearing from said report that there is no other personal property or personal assets available for the payment of the debts of the said decedent, it is adjudged, ordered and decreed that the real estate of the said decedent, or so much thereof as may be necessary, be taken and treated as assets, and be applied to the discharge of the indebtedness of the said decedent above-named.

And from said report it further appears that the said decedent died the owner in fee simple of the following estate: (*here describe the same*).

And it further appears from said report that the first liens on said real estate, and of equal dignity with each other, are the following: (*set forth the names of the persons holding the liens, the nature thereof, their dates and respective amounts*); and the said liens are valid and subsisting liens upon the said real estate, and are the first liens thereon.

And it further appears from said report that the second lien upon said real estate (*here describe the lien, by giving the name of the party holding it, the date and amount and continue as to other liens*).

It is therefore adjudged, ordered and decreed that the personal representative of the said decedent or the said (*here naming the defendants*) heirs at law of the said decedent, do pay unto the said (*here name all of the lienors, amounts, etc., particularly specifying the same*), within ...... days from the rising of this court, and in default thereof that said lands be sold, or so much thereof as may be necessary, to pay off and discharge the said liens and the costs of this suit; and for the purpose of making said sale, Q. M. is hereby appointed a special commissioner, who shall advertise the time, terms and place of such sale for four successive weeks in some newspaper published in this county, and by publishing notice thereof for a like period at the front door of the court house of this county; said sale to be upon the following terms: (*here set forth the terms*); and shall give bond (*if there be more than one commissioner, the decree may provide that only the acting commissioner shall give bond*) in the penalty of ...... dollars with good security before the clerk of this court, conditioned for the faithful performance of his duties as such commissioner, and to account for and pay over all moneys which may come into his hands by virtue of his appointment as such commissioner, and what he shall do hereunder, he shall report to the next term of this court.

Idem.

251. Advertisement of Sale of Real Estate to Be Made by a Special Commissioner.

NOTICE OF JUDICIAL SALE

Or,

PUBLIC SALE OF VALUABLE REAL ESTATE

Pursuant to a decree of the ...... court of the ...... of ......, made and entered on the ...... day of ......, 19...., in the chancery cause of A. B. v. C. D. and others, pending in the ...... court of ......, ..., I will on Saturday, the ...... day of ......, 19...., at the front door of the court-house of ......, at ...... o'clock ...... M. of that day, offer for sale to the highest bidder, the following described real estate: (*here describe the property*).

Terms of sale: (*here set forth the terms of sale*).

P. W.,
Special Commissioner.

I, C. C. B., clerk of the ...... court of the ...... of ......, hereby certify that bond with security approved by me as sufficient, and in the penalty provided by said decree, has been given by said special commissioner, (*or,* by ...... acting special commissioner).

C. C. B.,
Clerk.

Idem; text page 878.

252. Report of Sale by a Special Commissioner.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D., et als. } In Chancery. Report.

To the Hon. ......, Judge of the said Court:

I, the undersigned special commissioner, respectfully report unto your honor that by virtue of a decree of the ...... Court of the ...... of ......, in the above styled chancery cause of A. B. v. C. D. et als, rendered at the ...... term, 19...., of said Court, that after having advertised the time, terms and place of sale in the ......, a newspaper published in ......, ..., for four successive weeks, I, the said commissioner, offered and exposed for sale, at the front door of the Court House in said County, the real estate in the bill and proceedings mentioned, on the ...... day of ......, 19...., at which sale C. D., became the purchaser of the one undivided half of lot No. ...... (*here describe the lot*), he being the highest bidder, for the sum of ...... dollars; and the said C. D. having the first lien on said lot by virtue of the decree aforesaid for the sum of ...... dollars, his claim being more than the purchase money of said property, I, neither required him to pay any money or to give bond, but respectfully ask that a decree be rendered against the said C. D. for the costs of the suit and commissions and costs of sale herein if the money otherwise obtained, as hereinafter shown, be insufficient for that purpose.

I also offered for sale on that day, at the Court House of the said ......, lot No. ...... (*here describe the lot*), of which said A. B. became the purchaser for the sum of $......, he being the highest bidder therefor.

I further report that he paid us in hand the cash installment of $......, and executed his three several bonds (*or* notes) for $...... each, with A. M. as his security, payable in six, twelve and eighteen months, with interest from day of sale; that we believe said property brought a fair price at said sale, and would most respectfully recommend that said sales be confirmed. (*If purchaser desires to pay all cash or otherwise change the terms of sale so report. Report also any other details that may affect the sale.*)

(*It is often customary to return with the report a contract signed by the auctioneer or by the auctioneer and purchaser.*)

I herewith return said notes and a certified check of the Bank of ...... payable to our order, for the sum of $......, the amount of the cash payment of A. B., on the above-described lot, in which bank said cash payment has been deposited.

All of which is respectfully submitted.

P. W.,
Special Commissioner.

Idem; text page 895.

253. Exceptions to a Special Commissioner's Sale

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. et als.
} In Chancery. Exceptions.

Exceptions taken by the defendant to the sale made in the above cause, by P. W., special commissioner.

The defendant, C. D., excepts to the sale of the real estate made on the .... day of ......, 19.., by P. W., special commissioner in said cause, upon the following grounds:

First: Because (*here set forth the first ground*);

Second: Because (*here set forth the second ground, and continue until all the grounds of exception are set forth*).

Wherefore, the said defendant prays that his said exceptions may be sustained, that the said sale may be set aside; and that the property may be resold under the decree of sale entered in this cause.

(*And if it is desired to have the property sold in separate lots instead of as a whole, and the decree does not so provide, and the commissioner has failed to do so, though it is his duty so to do in the absence of special directions, ask the court for specific directions as to the mode of sale.*)

C. D.
By Counsel.

Q. M., Counsel.

254a. Deed of Special Commissioner, Long Form.

This Deed, made this ...... day of ......, 19.., between P. W., Special Commissioner, party of the first part, and J. H. N., party of the second part, WITNESSETH:

That Whereas, on the ...... day of ......, 19.., it was ordered by the ...... Court of ...... of ......, ..., in a certain cause in chancery then depending in the said Court between A. B., plaintiff, and C. D. et als, defendants, that the said P. W., who was thereby appointed Special Commissioner for the purpose, should, at public auction, upon the following terms, to-wit: (*here state terms*) make sale of that certain tract or parcel of land together with the improvements thereon, (*here describe* *property*) after advertising the time, terms and place of sale, (*here insert provisions for advertisement*); and,

Whereas, the said P. W., Special Commissioner as aforesaid, in pursuance of said decretal order, did, on the ...... day of ......, 19.., at (*state place of sale*) offer for sale at public auction the tract or parcel of land aforesaid, having in pursuance of said order advertised the time, terms and place of sale as will appear by a certificate of the editor of the said ...... filed with the report made to the Court of the proceedings of the said Commissioner, at which sale the said tract or parcel of land was struck off to the said J. H. N. for the sum of $...., that being the highest bid received for the same; and,

Whereas, the said sale was ratified and confirmed by order of the said Court, dated ......, 19.., and the said Commissioner was authorized to accept payment of all of the said purchase money in cash and directed, upon the said payment, to execute and deliver to the said J. H. N., a special warranty deed for the said property;

(*Add in Virginia*: and, Whereas in pursuance of the statute of such cases made and provided, the names of the parties on whose behalf this conveyance is made, are here set out, to-wit: *here insert names;*)

Now, Therefore, for and in consideration of the premises and the said sum of $...., to him in hand paid by the said J. H. N., agreeable to the terms of the order as aforesaid, at and before the sealing and delivery of this deed, the receipt whereof is hereby acknowledged, the said P. W., Special Commissioner as aforesaid, in pursuance of the said decretal order and in order to carry into effect the said sale, doth grant, bargain, sell and convey unto the said J. H. H., his heirs and assigns forever, with special warranty, the said tract or parcel of land hereinabove described with all buildings thereon and appurtenances thereto appertaining.

Witness the following signature and seal:

.....................(SEAL).

Special Commissioner.

State of ......,
...... of ......, to-wit:

I, ..., a Notary Public in and for the State and ...... aforesaid, do hereby certify that P. W., Special Commissioner, whose name is signed to the foregoing deed, bearing date the .... day of ......, 19.., has this day acknowledged the same before me in my said ......

Given under my hand this ...... day of ......, 19..

....
Notary Public.

My commission expires ......

Idem; Text page 906; Va. Code, § 6296.

254b. Deed of Special Commissioner, Short Form.

This Deed, made this ...... day of ......, 19.., between P. W., Special Commissioner as hereinafterward shown, of the one part, and J. H. N., of the other part, WITNESSETH:

Whereas, in a certain suit in chancery depending in the ...... Court of the ...... of ......, ..., under the short style of A. B. v. C. D. et als, the party of the first part was authorized and directed to convey, with special warranty of title, to the party of the second part the real property hereinafterwards described, all of which will more fully and at large appear by reference to the proceedings in the court and cause aforesaid;

(*Add in Virginia*, and, Whereas, in pursuance of the statute in such cases made and provided, the names of the parties on whose behalf this conveyance is made, are here set out, to-wit: *here insert names*).

NOW, THEREFORE, in consideration of the premises, and in execution of the authority and directions of the decretal order aforesaid, the party of the first part, special commissioner, as aforesaid, doth hereby grant and convey, with special warranty of title, unto the party of the second part, the following described real property, situated in ......, in the State of ......, to-wit:

Witness the following signature and seal, on the day and year first aforesaid.

P. W. (Seal).
Special Commissioner.

State of ......,
...... of ......, to-wit:

I, ..., a Notary Public in and for the State and ...... aforesaid, do hereby certify that P. W., Special Commissioner, whose name is signed to the foregoing deed, bearing date the ...... day of ......, 19.., has this day acknowledged the same before me in my said ......

Given under my hand this .... day of ......, 19..

....
Notary Public.

My commission expires ......

Idem.

255. Report of Commissioner as to Delivery of Deed.

In the ...... Court of the ...... of ......, ...:

A. B.
v. } In Chancery. Report.
C. D. et als.

The undersigned begs to report to the Court that under and by virtue of the decrees entered in this cause on ...., 19.., and ......, 19.., he did prepare, execute, acknowledge for record and did deliver on ...., 19.., to J. H. N., ... a deed dated ...., 19.., conveying to J. H. N., the property in the ...... known ...... by full description and by reference to the map mentioned in said decree of ...., 19.., a copy of which was attached to the Deed. Some of the adult members of the K. family united as grantors in said Deed. The said Deed conformed to the directions of said decrees.

Respectfully submitted this .... 19..

P. W.

Special Commissioner.

Idem.

256. Order Ratifying Delivery of Deed.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. et als.
} In Chancery. Order.

Upon reading and considering the report dated ...., 19.., made by Special Commissioner P. W. as to his action under the decrees in this cause of ...., 19.., and of ...., 19.., and which report is this day filed, the Court doth ratify and approve the execution and delivery by said Special Commissioner to J. H. N. of a Deed conveying to it the property known as ...... as stated in said report and as authorized by said decrees.

Idem.

257. Order Entering Rule against Purchaser at Judicial Sale for Failure to Comply with His Purchase.

In the ...... Court of the ...... of ......, ...:

A. B.
v.
C. D. et als.
} In Chancery. Order.

This cause came on this .... day of ...., 19.., to be again heard on the papers formerly read therein, and former orders and proceedings had therein; and was argued by counsel. Upon consideration whereof the court doth adjudge, order and decree that J. H. N., being served with a copy of this order ten days before the ...... day of ......, 19.., do on that day show cause to the court, if any he can, why he should not be compelled to comply with his purchase of the ...... acres of land from P. W., special commissioner, and upon his failure to do so why the said land should not be resold at his risk and costs.

Idem; text page 908.

XXXIII. Forms for Appeals

258. (Va. and W. Va.) Petition for an Appeal.

To the Honorable Judges of the
Supreme Court of Appeals of ......:

Your petitioner, A. B., represents that on the ...... day of ......, 19.., a suit in chancery was instituted in the ...... Court of ......, by C. D. against your petitioner; whereupon such proceedings were had that a final decree (*or state nature of appealable decree*) in said cause was rendered against your petitioner in the said court on the ...... day of ......, 19..

In Virginia here insert: A transcript of the record (*or state what portion of the record is transcribed*) of which suit and of the final decree (*or other appealable decree*) therein rendered is herewith exhibited, from which it appears that the Supreme Court of Appeals has jurisdiction.

In West Virginia insert: the original of the record (*or state what portion of the record is exhibited*) of which suit and of the final decree (*or other appealable decree*) therein rendered is herewith exhibited, from which it appears that the Supreme Court of Appeals has jurisdiction.

Your petitioner is advised and represents to the court that the said decree is erroneous, and that petitioner is aggrieved thereby in the following particulars:

(*Here state in order the errors complained of.*)

And your petitioner represents further that said decree is erroneous, uncertain and informal in other respects.

Your petitioner therefore prays that a writ of *supersedeas* (*the prayer for this writ may be omitted*) may be awarded him, and that said decree may be reversed and annulled (*or state other relief desired*).

A. B.
by Q. M., Counsel.

I, R. G. W., an attorney practicing in the Supreme Court of Appeals of ...... hereby certify that in my opinion there is error in the decree of the .... day of ......, 19.., of the ...... Court of ......, in favor of C. D. against A. B. as set forth in the foregoing annexed petition, for which the same should be reviewed by the Supreme Court of Appeals.

R. G. W. Attorney.

Text pages 922, 954; Va. Code, § 6336-6349; Barnes' W. Va. Code. Ch. 135, § 1-8.

259. (Va.) Notice of Application for Transcript of Record.

In the ...... Court of the ...... of ......, Virginia:

A. B.
v. } In Chancery. Notice.
C. D.

To C. D.

You are hereby notified that with a view to appealing from the decree entered in the above entitled cause at the ...... Term, 19.., of the court above named, (to-wit on the ...... day of ......, 19..) the undersigned will on the ...... day of ......, 19.., at ...... o'clock ...... M, apply to ......, Clerk of the said Court, at his office in ......, for a transcript of record of so much of the cause above named wherein said decree is, as will enable the Supreme Court of Appeals of Virginia, or a judge thereof in vacation, to whom the petition for appeal from said decree is to be presented, properly to decide on such petition, and enable said court, if the petition be granted, properly to decide the questions that may arise before it, viz: (*here detail portions in order of the record of which a transcript is desired*).

C. D.,
By Counsel.

......, Virginia, ..., 19..

Q. M., Counsel.

Idem.

260. (Va.) Order Prescribing the Portions of Record to Be Transcribed.

In the ...... Court of the ...... of ......, Virginia:

A. B.
v. } In Chancery. Order.
C. D.

C. D., having given notice of appeal from the decree of the .... day of ......, 19.., in the above entitled cause, and counsel for the complainant, having insisted upon the copying of the whole of the record in the said cause, and counsel for the defendant objecting thereto, and the matter having been submitted to me as the Judge who heard and determined said cause, I hereby direct the Clerk to copy as and for the record of the appeal by the said C. D., the parts of the record specified in his said notice of appeal, omitting therefrom, (*state parts of record to be omitted*).

Dated ......, Virginia, ..., ..., 19..

F. H. B., Judge of the
...... Judicial Circuit of Virginia.

Idem.

261. (Va.) Certificate of Clerk as to Record and Notice to Opposite Party or Counsel.

State of Virginia,
...... of ......, to-wit:

I, C. C. B., Clerk of the ...... Court of ......, ..., do hereby certify that the foregoing is a correct copy of that portion of the record directed to be copied in the chancery cause of A. B. v. C. D. which was submitted to the presiding Judge and copied herewith in accordance with his directions.

And I do further certify that a notice of the intention of the said C. D. to apply for a transcript of a part of the record in said cause was duly given to the opposite party through his counsel.

C. C. B.
Clerk of the ...... Court of the
...... of ......, Virginia.

Idem.

262. (Va. and W. Va.) Appeal Bond.

Know all men by these presents, That we, ... and ...... are held and firmly bound unto the Commonwealth of Virginia (*or* State of West Virginia) in the sum of ......dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia (*or* State of West Virginia) we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemptions as to this obligation, and also of any claim, or right to discharge any liability to the Commonwealth (*or* State) arising under this bond, or by virtue of said office, post or trust, with coupons detached from bonds of this State. Sealed with our seals, and dated this ...... day of ......, 19...

The Condition of the Above Obligation is Such, That whereas ...... by petition to the Supreme Court of Appeals of the State of ...... has prayed and obtained an appeal from, and a *supersedeas* to a decree of the ...... Court of the ...... of ......, pronounced on the ...... day of ......, 19.., in a suit depending in said Court, in which ...... is the plaintiff and ...... the defendant, upon entering into bond with sufficient security in the Clerk's Office of the said ...... Court of the ...... of ......, in the sum of ...... dollars.

Now, Therefore, If ...... shall perform and satisfy the said decree in case the same be affirmed or the said appeal and *supersedeas* be dismissed, and shall also pay all damages, costs and fees which may be awarded against or incurred by ...... (*In Virginia add*, and all actual damages incurred in consequence of the supersedeas. *Alter condition of bond according to circumstances, following language of the statutes*) then this obligation to be void; otherwise to remain in full force and virtue.

................(SEAL).
................(SEAL).

In the Clerk's Office of the .... Court of the ...... of ......, ...

This day personally appeared before me ...... Clerk of the ...... Court of the ...... of ......, and made oath that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expects to have to pay, is worth the sum of ...... dollars, over and above all exemptions allowed by law.

Given under my hand, this ...... day of ......, 19..

..................Clerk.

Text page 958; Va. Code, § 6351; Barnes' W. Va. Code, Ch. 135, § 14.

263. (Va. and W. Va.) Suspension Bond.

Know all men by these presents, That we, ... and ...... are held and firmly bound unto the Commonwealth of Virginia (*or* State of West Virginia) in the sum of ...... dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, (*or* State of West Virginia) we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by those presents. And we hereby waive the benefit of our exemptions as to this obligation, and also of any claim, or right to discharge any liability to the Commonwealth (*or* State) arising under this bond, or by virtue of said office, post or trust, with coupons detached from bonds of this State. Sealed with our seals, and dated this .... day of ......, 19..

The Condition of the above obligation is such, That Whereas a decree was entered on the ...... day of ......, 19.., in the ...... Court of ......, ..., in a suit depending in said Court, in which ...... and ...... are the plaintiffs and ......, the defendants, suspending for the period of ...... days the execution of a certain decree rendered in said suit of the ...... day ......, 19.., in order that said ......, who intends to present a petition to the Supreme Court of Appeals of ......, for an appeal from said decree of the ...... day of ......, 19.., may so do, provided the said ...... enter into a bond with sufficient security in the Clerk's Office of the said ...... Court of the ...... of ......, in the sum of ...... dollars.

Now, Therefore, If the said ...... shall pay all such damages as may accrue to any person by reason of the said suspension, in case a *supersedeas* to said decree should not be allowed, and be effectual within the said ...... days, then this obligation to be void; otherwise to remain in full force and virtue.

................(SEAL).
................(SEAL).

In the Clerk's Office of the .... Court of the ...... of ......, ...

This day personally appeared before me ...... Clerk of the ...... Court of the ...... of ......, and made oath that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expects to have to pay, is worth the sum of ...... dollars, over and above all exemptions allowed by law.

Given under my hand, this ...... day of ......, 19..

..................Clerk.

Text page 956; Va. Code, § 6338; Barnes' W. Va. Code, Ch. 135, § 4.

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